

Table of Contents: Paycheck Protection Program (PPP) Loan Q&A for Bankers

(This information is current as of **March 3, 2021**)

Underlined items reflect new or revised FAQ due to Economic Aid Act

Highlighted items reflect new or revised FAQs due to new 03/03/2021 SBA Guidance

NOTE: These FAQs will be revised to reflect changes made by the IFR on Revisions to Loan Amount Calculations and Eligibility from 03/03/2021 once updated by SBA.

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A. General

How long is SBA authorized to guarantee loans under the new program?

SBA is authorized to guarantee loans under the PPP through March 31, 2021.

How much is SBA authorized under the temporary program?

Congress has authorized a total program level of \$806,450,000,000 to provide guaranteed loans under this temporary 7(a) program under sections 7(a)(36) (PPP loans or First Draw PPP Loans) and 7(a)(37) (Second Draw PPP Loans) of the Small Business Act, a portion of which is available for new First Draw and Second Draw PPP Loans.

Do lenders have delegated authority to make PPP loans?

Yes, lenders have delegated authority to make PPP loan.

What can lenders rely upon in order to determine eligibility of the borrower and use of loan proceeds?

SBA will allow lenders to rely on certifications of the borrower in order to determine eligibility of the borrower and use of loan proceeds and to rely on specified documents provided by the borrower to determine qualifying loan amount and eligibility for loan forgiveness.

What must lender comply with under the program?

Lenders must comply with the applicable lender obligations set forth in the interim final rule, but will be held harmless for borrowers' failure to comply with program criteria and will not be subject to any enforcement action or penalty relating to loan origination or forgiveness of the PPP loan if the lender acts in good faith relating to the origination or forgiveness of the PPP loan and satisfies all other applicable Federal, State, local, and other statutory or regulatory requirements (as provided in section 7A(h) of the Small Business Act, as amended).

Are there remedies for violations of PPP requirements or fraud?

Remedies for violations of PPP requirements or fraud are separately addressed in the interim final rule. See information found later within this FAQ document.

How does the new round of rules interact with existing loan program requirements?

The program requirements of the PPP identified in the new interim final rule temporarily supersede any conflicting Loan Program Requirement (as defined in 13 CFR 120.10).

B. What Do Borrowers Need to Know and Do?

1. What businesses, organizations, and individuals are eligible?

a. Am I eligible?¹

You are eligible for a PPP loan if:

- i. you, together with any affiliates (if applicable), are:

¹ See also interim final rule on Second Draw PPP Loans for eligibility criteria for Second Draw PPP Loans.

- a small business concern under the applicable revenue-based size standard established by SBA in 13 C.F.R. 121.201 for your industry or under the SBA alternative size standard²;
- an independent contractor, eligible self-employed individual, or sole proprietor;
- a business concern, a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, and you employ no more than the greater of 500 employees or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201;
- a housing cooperative, an eligible section 501(c)(6) organization, or an eligible destination marketing organization, that employs no more than 300 employees;
- a news organization that is majority owned or controlled by a NAICS code 511110 or 5151 business or a nonprofit public broadcasting entity with a trade or business under NAICS 511110 or 5151, that employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for your industry) per location; or
- another type of entity specifically provided for by PPP rules (as described below); and

ii. you were in operation on February 15, 2020, and either had employees for whom you paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC or you were an eligible self-employed individual, independent contractor, or sole proprietorship with no employees. You must submit documentation sufficient to establish eligibility and to demonstrate the qualifying payroll amount, which may include, as applicable, payroll records, payroll tax filings, Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records.

Are agricultural producers, farmers, and ranchers eligible for PPP loans?³

Yes. Agricultural producers, farmers, and ranchers are eligible for First Draw PPP loans if: (i) the business has 500 or fewer employees, or (ii) the business fits within the applicable revenue-based sized standard under 13 C.F.R. 121.201.

Additionally, agricultural producers, farmers, and ranchers can qualify for First Draw PPP Loans as a small business concern if their business meets SBA's "alternative size standard." The "alternative size standard" is currently: (1) maximum net worth of the business is not more than \$15 million, and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

Agricultural producers, farmers and ranchers are eligible for a Second Draw PPP Loan if they have 300 or fewer employees and meet the other eligibility criteria in subsection (c) of the interim final rule for Second Draw PPP Loans. For all of these criteria, the applicant must include its affiliates in its calculations.

² Under SBA's alternative size standard, a business concern may qualify as a small business concern if it, together with any affiliates: (1) has a maximum tangible net worth of not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) for the two full fiscal years before the date of application is not more than \$5 million.

³ Revised March 3, 2021 to conform to the interim final rule for Second Draw PPP Loans.

Are agricultural and other forms of cooperatives eligible to receive PPP loans?⁴

As long as other PPP eligibility requirements are met, small agricultural cooperatives and other cooperatives may receive PPP loans. The Economic Aid Act added housing cooperatives (as defined in section 216(b) of the Internal Revenue Code of 1986) that employ not more than 300 employees to the entities eligible for First Draw PPP Loans and Second Draw PPP Loans.

Are employees of foreign affiliates included for purposes of determining whether a PPP borrower has more than 500 employees (or 300 employees, if applicable)?

Yes. SBA's affiliation regulations provide that to determine a concern's size, employees of the concern "and all of its domestic and foreign affiliates" are included. 13 C.F.R. 121.301(f). Therefore, to calculate the number of employees of an entity for purposes of determining eligibility for the PPP, an entity must include all employees of its domestic and foreign affiliates, except in those limited circumstances where the affiliation rules expressly do not apply to the entity.⁵ Any entity that, together with its domestic and foreign affiliates, does not meet the 500-employee, 300-employee,⁶ or other applicable PPP size standard is therefore ineligible for a PPP loan. Under no circumstances may PPP funds be used to support non-U.S. workers or operations.

How do SBA's affiliation rules at 13 C.F.R. 121.301(f) apply with regard to counting the employees of foreign and U.S. affiliates?⁷

For purposes of the PPP's 500 or fewer employee size standard (or 300 employee size standard for Second Draw PPP Loans and certain entities for First Draw PPP Loans), an applicant must count all of its employees and the employees of its U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules. 13 C.F.R. 121.301(f)(6). Business concerns seeking to qualify for a First Draw PPP Loan as a "small business concern" under section 3 of the Small Business Act (15 U.S.C. 632) on the basis of the employee-based size standard must do the same.

⁴ Revised March 3, 2021 to conform to the consolidated interim final rule providing updates to the PPP and the interim final rule for Second Draw PPP Loans.

⁵ Paragraph 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv)), as added by the CARES Act and amended by the Economic Aid Act, waives SBA's affiliation rules for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); and (4)(a) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151. SBA also applies affiliation exceptions to certain categories of entities. 13 C.F.R. 121.103(b).

⁶ For housing cooperatives, section 501(c)(6) organizations, and destination marketing organizations, the applicable size standard is not more than 300 employees.

⁷ Revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans.

What time period should borrowers use to determine their number of employees?⁸

Answer: Borrowers may use their average employment over the time period used to calculate their loan amount to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

Seasonal businesses must use the average number of employees per pay period during the 12-calendar week period the borrower used to calculate its payroll costs.

To determine borrower eligibility under the 500-employee or other applicable threshold for First Draw PPP Loans, or the 300-employee threshold for Second Draw PPP Loans established by the Economic Aid Act, must a borrower count all employees or only full-time equivalent employees?⁹

For purposes of loan eligibility, the CARES Act defines the term employee to include "individuals employed on a full-time, part-time, or other basis." A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of "fulltime equivalent employees" to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions.

I have income from self-employment and file a Form 1040, Schedule C. Am I eligible for a PPP Loan?

You are eligible for a PPP loan if: (i) you were in operation on February 15, 2020; (ii) you are an individual with self-employment income (such as an independent contractor or a sole proprietor); (iii) your principal place of residence is in the United States; and (iv) you filed or will file a Form 1040 Schedule C for 2019 or meet the requirements below. However, if you are a partner in a partnership, you may not submit a separate PPP loan application for yourself as a self-employed individual. Instead, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred on a PPP loan application filed by or on behalf of the partnership. Partnerships are eligible for PPP loans under the CARES Act, as amended by the Economic Aid Act, and SBA has determined, in consultation with the Treasury, that limiting a partnership and its partners (and an LLC filing taxes as a partnership) to one PPP loan is necessary to help ensure that as many eligible borrowers as possible obtain PPP loans before the statutory deadline of March 31, 2021. The limitation will allow lenders to more quickly process applications and lower the burdens of applying for partnerships/partners.

⁸ Revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans and to make other changes. First, the question was revised to remove discussion of how to calculate a borrower's maximum loan amount because that question has been addressed in greater detail in the documents "How to Calculate Maximum Loan Amounts for First Draw PPP Loans and What Documentation to Provide – by Business Type" and "Second Draw Paycheck Protection Program (PPP) Loans: How to Calculate Revenue Reduction and Maximum Loan Amounts Including What Documentation to Provide". The question was also revised to clarify how seasonal employers determine their number of employees.

⁹ Revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

SBA has further determined that permitting partners to apply as self-employed individuals would create unnecessary confusion regarding which entity, the partner or the partnership, applies for partner and LLC member income, and would generate loan proceeds use coordination and allocation issues. Rent, mortgage interest, utilities, other debt service, operations expenditures, property damage costs, supplier costs, and worker protection expenditures are generally incurred at the partnership level, not partner level, so it is most natural to provide the funds for these expenses to the partnership, not individual partners.

NOTE: In addition, you should be aware that participation in the PPP may affect your eligibility for state-administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act Employee Retention Credits. On June 26, 2020, SBA issued additional guidance for those individuals with self-employment income who: (i) were not in operation in 2019 but who were in operation on February 15, 2020, and (ii) filed a Form 1040 Schedule C for 2020. See “How To Calculate Maximum Loan Amounts – By Business Type,” Question 10 posted on SBA’s website.¹⁰

Are eligible businesses owned by directors or shareholders of a PPP lender permitted to apply for a PPP loan through the lender with which they are associated?

SBA regulations (including 13 CFR 120.110 and 120.140) shall not apply to prohibit an otherwise eligible business owned (in whole or part) by an outside director or holder of a less than 30 percent equity interest in a PPP lender from obtaining a PPP loan from the PPP lender on whose board the director serves or in which the equity owner holds an interest, provided that the eligible business owned by the director or equity holder follows the same process as any similarly situated customer or account holder of the lender.

Favoritism by the lender in processing time or prioritization of the director’s or equity holder’s PPP application is prohibited. Lenders should comply with all other applicable state and federal regulations concerning loans to associates of the lender. Lenders should also consult their own internal policies concerning lending to individuals or entities associated with the lender.

The foregoing paragraph does not apply to a director or owner who is also an officer or key employee of the PPP Lender. Officers and key employees of a PPP Lender may obtain a PPP Loan from a different lender, but not from the PPP Lender with which they are associated. SBA also reminds Lenders that the “Authorized Lender Official” for each PPP Loan is subject to the limitations described in the PPP Lender Application Form (SBA Form 2484), which states in relevant part: “Neither the undersigned Authorized Lender Official, nor such individual’s spouse or children, has a financial interest in the Applicant [Borrower].”

Section 1102 of the CARES Act provides that PPP loans are available only to applicants that were “in operation on February 15, 2020.” Is a business that was in operation on February 15, 2020 but had a change in ownership after February 15, 2020 eligible for a PPP loan?¹¹

Yes. As long as the business was in operation on February 15, 2020, if it meets the other eligibility criteria, the business is eligible to apply for a PPP loan regardless of the change in ownership. In addition, where there is a change in ownership effectuated through a purchase of substantially all assets

¹⁰ https://www.sba.gov/sites/default/files/2020-12/How-to-Calculate-Loan-Amounts-508_6-26-20.pdf

¹¹ Revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

of a business that was in operation on February 15, the business acquiring the assets will be eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number and even if the acquiring business was not in operation until after February 15, 2020. If the acquiring business has maintained the operations of the pre-sale business, the acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP application, except where the pre-sale business had applied for and received a PPP loan. The Administrator, in consultation with the Secretary, has determined that the requirement that a business “was in operation on February 15, 2020” should be applied based on the economic realities of the business’s operations.

If a seasonal business was dormant or not fully operating as of February 15, 2020, is it still eligible?

Yes, in evaluating eligibility, a seasonal business will be considered to have been in operation as of February 15, 2020, if the business was in operation for any 12-week period between February 15, 2019 and February 15, 2020. This approach aligns the eligibility criteria for seasonal businesses being in operation with the time period for calculation of a seasonal employer’s maximum loan amount from section 336 of the Economic Aid Act and makes PPP loans available to seasonal businesses that operate outside of the original, more limited time frame.

My small business is a seasonal business whose activity increases from April to June. Considering activity from that period would be a more accurate reflection of my business’s operations. However, my small business was not fully ramped up on February 15, 2020. Am I still eligible?¹²

In evaluating a borrower’s eligibility, a lender may consider a seasonal borrower to have been in operation on February 15, 2020 if the business was in operation for any 12-week period between February 15, 2019 and February 15, 2020.

How does the 500 employee limit apply to news organizations with more than one physical location?

A business concern, or any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.), with more than one physical location that employs not more than 500 employees (or the size standard established by SBA for the NAICS code applicable to the business concern) per physical location, is eligible for a PPP loan if it: (1) is majority owned or controlled by a business concern that is assigned a NAICS code beginning with 511110 or 5151 or, with respect to a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11))), has a trade or business that falls under such a code; and (2) makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information. See section 3 for the applicability of SBA’s affiliation rules to news organizations.

How does the 500-employee limit for First Draw PPP Loans and the 300-employee limit for Second Draw PPP Loans apply to a public broadcasting station if a college or university operates or holds the license for the station and the station is not a separate legal entity?

Subsection B.1.g.vi of the consolidated interim final rule implementing updates to the PPP, 86 FR 3692 (Jan. 14, 2021), and subsection (c)(4) of the interim final rule for Second Draw PPP Loans, 86 FR 3712 (Jan. 14, 2021), apply the 500- and 300-employee limits, respectively, based on the number of employees “per location” of the public broadcasting station. This limit on the number of employees per

¹² Published April 6, 2020 and revised March 3, 2021 to conform to subsection B.1.e. of the consolidated interim final rule implementing updates to the PPP.

location applies to the public broadcasting station itself and does not include other employees of a college or university that operates or holds the license for the station.

Are small business concerns (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) required to have 500 or fewer employees to be eligible borrowers for First Draw PPP Loans?¹³

No. Small business concerns can be eligible borrowers for First Draw PPP Loans even if they have more than 500 employees, as long as they satisfy the existing statutory and regulatory definition of a “small business concern” under section 3 of the Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-based size standard corresponding to its primary industry. Go to www.sba.gov/size for the industry size standards.

Additionally, a business can qualify for a First Draw PPP Loan as a small business concern if it met both tests in SBA’s “alternative size standard” as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

A business that qualifies as a small business concern under section 3 of the Small Business Act, 15 U.S.C. 632, may truthfully attest to its eligibility for a First Draw PPP Loan on the Borrower Application Form, unless otherwise ineligible.

Notwithstanding the foregoing, housing cooperatives, eligible 501(c)(6) organizations, and eligible destination marketing organizations, are eligible for a First Draw PPP Loan only if they employ no more than 300 employees.

Does my business have to qualify as a small business concern (as defined in section 3 of the Small Business Act, 15 U.S.C. 632) in order to receive a First Draw PPP Loan?¹⁴

No. In addition to small business concerns, a business is eligible for a First Draw PPP Loan if the business has 500 or fewer employees or the business meets the SBA employee-based or revenue-based size standard for the industry in which it operates (if applicable). Similarly, First Draw PPP Loans are also available for qualifying tax-exempt nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (IRC), tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act, and eligible nonprofit news organizations⁶ that have 500 or fewer employees or meet the SBA employee-based size standards for the industry in which they operate. First Draw PPP Loans also are available for housing cooperatives, eligible section 501(c)(6) organizations, and eligible destination marketing organizations that employ not more than 300 employees.

¹³ Published April 6, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP. This FAQ applies only to First Draw PPP Loans. Different eligibility requirements apply to Second Draw PPP Loans.

¹⁴ Published April 6, 2020 and revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP. This FAQ applies only to First Draw PPP Loans. Different eligibility requirements apply to Second Draw PPP Loans.

Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?¹⁵

In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.¹⁶

Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repaid the loan in full by May 18, 2020 will be deemed by SBA to have made the required certification in good faith.

SBA reminded borrowers to review carefully the required certification on the Borrower Application Form that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA guidance and regulations provide that any borrower who applied for a PPP loan prior to April 24, 2020 and repaid the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith. Is it possible for a borrower to obtain an extension of the May 7, 2020 repayment date?¹⁷

SBA extended the repayment date for this safe harbor to May 14, 2020 and subsequently extended it again to May 18, 2020. See also the following FAQ. Borrowers did not need to apply for the extensions. The extensions were implemented through revisions to the SBA's interim final rule providing the safe harbor. See the FAQ later in this listing for additional guidance on how SBA will review the borrower's good-faith certification concerning the necessity of their loan request.

An SBA interim final rule posted on May 8, 2020 provided that any borrower who applied for a PPP loan and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Is it possible for a borrower to obtain an extension of the May 14, 2020 repayment date?¹⁸

Yes, SBA extended the repayment date for this safe harbor to May 18, 2020, to give borrowers an opportunity to review and consider FAQ #46. Borrowers did not need to apply for this extension. This extension was implemented through a revision to the SBA's interim final rule providing the safe harbor.

¹⁵ Revised March 3, 2021 to reflect subsequent PPP guidance and the interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans.

¹⁶ Section 342 of the Economic Aid Act prohibits public companies from receiving a PPP loan after December 27, 2020.

¹⁷ Revised March 3, 2021 to reflect subsequent SBA interim final rules at 85 FR 29845 (May 19, 2020) and 85 FR 31357 (May 26, 2020).

¹⁸ Revised March 3, 2021 to reflect subsequent SBA interim final rules after FAQ was published May 13, 2020.

Do businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

See the above FAQ regarding adequate sources of liquidity.

Industry-Specific Eligibility Issues

Is a hospital owned by governmental entities eligible for a PPP loan?

Notwithstanding 13 CFR 120.110(j), a hospital that is otherwise eligible to receive a PPP loan as a business concern or nonprofit organization (described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code) shall not be rendered ineligible for a PPP loan due to ownership by a state or local government if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid.

Are businesses that receive revenue from legal gaming eligible for a PPP Loan?

A business that is otherwise eligible for a PPP Loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans. Businesses that received illegal gaming revenue remain categorically ineligible.

Are electric cooperatives that are exempt from Federal income taxation under section 501(c)(12) of the Internal Revenue Code eligible for a PPP loan?

Yes. An electric cooperative that is exempt from Federal income taxation under section 501(c)(12) of the Internal Revenue Code will be considered to be "a business entity organized for profit" for purposes of 13 CFR 121.105(a)(1). As a result, such entities are eligible PPP borrowers, as long as other eligibility requirements are met. To be eligible, an electric cooperative must satisfy the employee-based size standard established in the CARES Act, SBA's employee-based size standard corresponding to its primary industry, if higher, or both tests in SBA's "alternative size standard."¹⁹

Are telephone cooperatives that are exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code eligible for a PPP loan?

Yes. A telephone cooperative that is exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code will be considered to be "a business entity organized for profit" for purposes of 13 CFR 121.105(a)(1). As a result, such entities are eligible PPP borrowers, as long as other eligibility requirements are met. To be eligible, a telephone cooperative must satisfy the employee-based size standard established in the CARES Act, SBA's employee-based size standard corresponding to its primary industry, if higher, or both tests in SBA's "alternative size standard."²⁰

¹⁹ Under the alternative size standard, a business concern, including an electric cooperative, can qualify for the PPP as a small business concern if, as of March 27, 2020: (1) the maximum tangible net worth of the business was not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million. For an electric cooperative that does not have net income, the cooperative's savings distributed to its owner-members will be considered its net income.

²⁰ Under the alternative size standard, a business concern, including a telephone cooperative, can qualify for the PPP as a small business concern if, as of March 27, 2020: (1) the maximum tangible net worth of the business was not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million. For a telephone cooperative that does not have net income, the telephone cooperative's capital credits distributed to its owner-members will be considered its net income.

Are housing cooperatives as defined in section 216(b) of the Internal Revenue Code eligible for PPP loans?

Yes. Housing cooperatives (as defined in section 216(b) of the Internal Revenue Code of 1986) that employ not more than 300 employees are eligible to apply for PPP loans as long as other eligibility requirements are met. In addition, the provisions applicable to affiliation, described elsewhere in this FAQ, apply to housing cooperatives in the same manner as with respect to a small business concern.

Are nonprofit and tax-exempt news organizations eligible for PPP loans?

Yes. A public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (47 U.S.C. 397(11)) that is a nonprofit organization or any organization otherwise subject to section 511(a)(2)(B) of the Internal Revenue Code of 1986, and employs no more than 500 employees (or, if applicable, the size standard in number of employees established by SBA in 13 C.F.R. 121.201 for the entity's industry) per location is eligible for a PPP loan if the organization has a trade or business that is assigned a NAICS code beginning with 511110 or 5151, and makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the organization that produces or distributes locally focused or emergency information.²¹ See also FAQs on how the 500 employee limit applies to news organizations with more than one physical location. See also FAQs regarding applicability of SBA's affiliation rules to news organizations.

Do nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code qualify as "nonprofit organizations" under section 1102 of the CARES Act?²²

Section 1102 of the CARES Act defines the term "nonprofit organization" as "an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and that is exempt from taxation under section 501(a) of such Code." The Administrator, in consultation with the Secretary of the Treasury, understands that nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code are unique in that many such hospitals may meet the description set forth in section 501(c)(3) of the Internal Revenue Code to qualify for tax exemption under section 501(a), but have not sought to be recognized by the IRS as such because they are otherwise fully tax-exempt under a different provision of the Internal Revenue Code.

Accordingly, the Administrator will treat a nonprofit hospital exempt from taxation under section 115 of the Internal Revenue Code as meeting the definition of "nonprofit organization" under section 1102 of the CARES Act if the hospital reasonably determines, in a written record maintained by the hospital, that it is an organization described in section 501(c)(3) of the Internal Revenue Code and is therefore within a category of organization that is exempt from taxation under section 501(a).⁵² The hospital's certification of eligibility on the Borrower Application Form cannot be made without this determination. This approach helps accomplish the statutory purpose of ensuring that a broad range of borrowers,

²¹ This subsection provides that an eligible nonprofit news organization under section 317 of the Economic Aid Act must have no more than 500 employees. (For those nonprofit news organizations with more than one physical location, they must have no more than 500 employees per location.) This will make PPP loans available to nonprofit news organizations, regardless of whether the organization would be a business concern under SBA regulations, if the nonprofit news organization satisfies the same general size standard applicable under the PPP rules to other borrowers that are nonprofit or tax-exempt organizations. The Administrator, in consultation with the Secretary, has determined this requirement appropriately implements section 317 of the Economic Aid Act by making PPP loans available to nonprofit news organizations on the same terms as other nonprofit organizations that have been made eligible for PPP loans.

²² Revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP.

including entities that are helping to lead the medical response to the ongoing pandemic, can benefit from the loans provided under the PPP.

This guidance is solely for purposes of qualification as a “nonprofit organization” under section 1102 of the CARES Act and related purposes of the CARES Act, and does not have any consequences for federal tax law purposes. Nonprofit hospitals should also review all other applicable eligibility criteria, including an important limitation on ownership by state or local governments.

Are destination marketing organizations eligible for PPP loans?

Yes. Under the Economic Aid Act, any destination marketing organization²³ is eligible to receive a PPP loan as long as other eligibility requirements are met and if (1) the destination marketing organization does not receive more than 15 percent of its receipts from lobbying activities; (2) the lobbying activities of the destination marketing organization do not comprise more than 15 percent of the total activities of the organization; (3) the cost of the lobbying activities of the destination marketing organization did not exceed \$1,000,000 during the most recent tax year of the destination marketing organization that ended prior to February 15, 2020; (4) the destination marketing organization employs not more than 300 employees; and (5) the destination marketing organization: (a) is described in section 501(c) of the Internal Revenue Code and is exempt from taxation under section 501(a) of such Code; or (b) is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities.²⁴

Are 501(c)(6) organizations eligible for PPP loans?

Yes. Any organization that is described in section 501(c)(6) of the Internal Revenue Code and that is exempt from taxation under section 501(a) of such Code (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a PPP loan as long as other eligibility requirements are met and if: (1) the organization does not receive more than 15 percent of its receipts from lobbying activities; (2) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization; (3) the cost of the lobbying activities of the organization did not exceed \$1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and (4) the organization employs not more than 300 employees.

²³ Section 318 of the Economic Aid Act added the following definition to paragraph 7(a)(36)(A) of the Small Business Act (15 U.S.C. 636(a)(36)(A)): “(xv) the term ‘destination marketing organization’ means a nonprofit entity that is -- (I) an organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or (II) a State, or a political subdivision of a State (including any instrumentality of such entities) -- (aa) engaged in marketing and promoting communities and facilities to businesses and leisure travelers through a range of activities, including -- (AA) assisting with the location of meeting and convention sites; (BB) providing travel information on area attractions, lodging accommodations, and restaurants; (CC) providing maps; and (DD) organizing group tours of local historical, recreational, and cultural attractions; or (bb) that is engaged in, and derives the majority of the operating budget of the entity from revenue attributable to, providing live events.

²⁴ A destination marketing organization that is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities, is eligible for a PPP loan notwithstanding the SBA regulation at 13 CFR 120.110(j), which states that government-owned entities (except for businesses owned or controlled by a Native American tribe) are not eligible for SBA financial assistance.

When determining the eligibility of section 501(c)(6) organizations and destination marketing organizations for First Draw PPP Loans and Second Draw PPP Loans, how is “lobbying activities” defined?

For purposes of determining the eligibility of section 501(c)(6) organizations and destination marketing organizations for First Draw and Second Draw PPP Loans, “lobbying activities” is defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

May First Draw PPP Loan or Second Draw PPP Loan proceeds be used for lobbying activities or expenditures?

No. None of the proceeds of a First Draw PPP Loan or Second Draw PPP Loan may be used for (1) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602); (2) lobbying expenditures related to a State or local election; or (3) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

SBA regulations require approval by SBA’s Standards of Conduct Committee (SCC) for SBA Assistance, other than disaster assistance, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest is: a current SBA employee; a Member of Congress; an appointed official or employee of the legislative or judicial branch; a member or employee of an SBA Advisory Council or SCORE volunteer; or a household member of any of the preceding individuals. Do these entities need the approval of the SCC in order to be eligible for a PPP loan?²⁵

The SCC previously authorized a blanket approval for PPP loans to such entities so that further action by the SCC is not necessary in the PPP program. Under the Economic Aid Act, certain borrowers became ineligible and are prohibited from receiving a First Draw PPP Loan or Second Draw PPP Loan made after December 27, 2020. If a controlling interest in the borrower (meaning 20 percent by vote or value of the outstanding amount of any class of equity interest) is held directly or indirectly by the President of the United States, the Vice President of the United States, the head of an Executive Department, or a Member of Congress, or the spouse of such person as determined under applicable common law, the borrower is ineligible for a First Draw PPP Loan and a Second Draw PPP Loan. In addition, for any First Draw PPP Loan made before December 27, 2020, if the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any such person as determined under applicable common law, directly or indirectly held a controlling interest in the borrower on the date the loan application was submitted to the PPP lender, the borrower is required to disclose such interests to SBA on SBA Form 3508D and submit the form to the PPP lender following submission of the borrower’s application for loan forgiveness, as specified in subsection 6.c. of the consolidated interim final rule on loan forgiveness requirements and loan review procedures as amended by the Economic Aid Act.

SBA regulations require a written statement of no objection by the pertinent Department or military service before it provides any SBA Assistance, other than disaster loans, to an entity, if its sole proprietor, partner, officer, director, or stockholder with a 10 percent or more interest, or if a household member of any of the preceding individuals, is an employee of another Government

²⁵ Revised March 3, 2021 to confirm to the consolidated interim final rule implementing updates to the PPP, the interim final rule for Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness requirements and loan review procedure as amended by the Economic Aid Act.

Department or Agency having a grade of at least GS-13 or its equivalent. Does this requirement apply to PPP loans?²⁶

No. The SCC has determined that a written statement of no objection is not required from another Government Department or Agency for PPP loans. However, see information for a borrower with a controlling interest (meaning 20 percent by vote or value of the outstanding amount of any class of equity interest) that is held directly or indirectly by the head of an Executive Department or the spouse of such person as determined under applicable common law.

2. What businesses, organizations, and individuals are ineligible?

a. Could I be ineligible even if I meet the eligibility requirements in section 1?

You are ineligible for a PPP loan if, for example:

- You are engaged in any activity that is illegal under Federal, state, or local law;
- You are a household employer (individuals who employ household employees such as nannies or housekeepers);
- An owner of 20 percent or more of the equity of the applicant is presently incarcerated or, for any felony, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year; You, or any business owned or controlled by you or any of your owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government;
- Your business or organization was not in operation on February 15, 2020;
- You or your business received or will receive a grant under the Shuttered Venue Operator Grant program under section 324 of the Economic Aid Act;
- The President, the Vice President, the head of an Executive Department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in your business;
- Your business is an issuer, the securities of which are listed on an exchange registered as national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f). (SBA will not consider whether a news organization that is eligible under the conditions described in subsection 1 above regarding news organizations, is affiliated with an entity, which includes any entity that owns or controls such news organization, that is an issuer); or
- Your business has permanently closed.²⁷

²⁶ Revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP, the interim final rule for Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness and loan review procedures.

²⁷ This provision prohibits an entity that has gone out of business and has no intention of reopening from receiving a PPP loan. SBA, in consultation with Treasury, has determined the provision is necessary to maintain program integrity, prevent abuse, and prevent PPP loans being made to businesses that have permanently closed. Preserving funds for businesses in operation is necessary because only businesses that are still in operation will

I need to request a loan to support my small business operations in light of current economic uncertainty. However, I pleaded guilty to a felony crime a very long time ago. Am I still eligible for the PPP?

A business is ineligible due to an owner's criminal history only if an owner of 20 percent or more of the equity of the applicant:

- is presently incarcerated or, for any felony, is presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or
- has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year.

Are businesses that are generally ineligible for 7(a) loans under 13 CFR 120.110 eligible for a PPP loan?

Paragraphs (a), (g), and (k), of 13 C.F.R. 120.110 do not apply to PPP loans. For PPP loans, the ineligibility restriction in 13 C.F.R. 120.110(n) regarding incarceration, etc. is superseded by the interim final rule with the standard as outlined in the FAQ immediately above. Otherwise, a business is not eligible for a PPP loan if it is a type of business concern (or would be, if the entity were a business concern) described in 13 C.F.R. 120.110, except as permitted by the new interim final rule (see eligibility FAQ earlier in this FAQ) or otherwise permitted by PPP rules. Businesses that are not generally eligible for a 7(a) loan under 13 C.F.R. 120.110 are described further in SBA's Standard Operating Procedure (SOP) 50 10 6, Part 2, Section A, Chapter 3.²⁸

Will I be approved for a PPP loan if my business is in bankruptcy?

No. If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan. If the applicant or the owner of the applicant becomes the debtor in a bankruptcy proceeding after submitting a PPP application but before the loan is disbursed, it is the applicant's obligation to notify the lender and request cancellation of the application. Failure by the applicant to do so will be regarded as a use of PPP funds for unauthorized purposes. The Borrower Application Form for PPP loans (SBA Form 2483), which reflects this restriction in the form of a borrower certification, is a loan program requirement. Lenders may rely on an applicant's representation concerning the applicant's or an owner of the applicant's involvement in a bankruptcy proceeding.

retain employees, which is a primary purposes of the PPP. PPP was not intended to support businesses that have permanently closed. A borrower that has temporarily closed or temporarily suspended its business but intends to reopen remains eligible for a PPP loan.

²⁸ SOP 50 10 6 can be found at <https://www.sba.gov/document/sop-50-10-lender-development-company-loanprograms-0>. For PPP loans approved before December 27, 2020, see SOP 50 10 5(K), Subpart B, Chapter 2 for ineligible types of businesses. SOP 50 10 5(K) can be found at <https://www.sba.gov/document/sop-50-10-5-lenderdevelopment-company-loan-programs>.

If a borrower that was eligible for a First Draw PPP Loan files for bankruptcy protection after disbursement of the First Draw PPP Loan, is that borrower eligible for loan forgiveness of its First Draw PPP Loan?

Yes. If a borrower that was eligible for a First Draw PPP Loan files for bankruptcy protection after disbursement of the First Draw PPP Loan, that borrower is eligible for loan forgiveness, provided it meets all requirements for loan forgiveness set forth in the PPP Interim Final Rules, including but not limited to, loan proceeds are used only for eligible expenses and at least 60% of the loan proceeds is used for eligible payroll costs.

If a borrower that was eligible for a First Draw PPP Loan files for bankruptcy protection after disbursement of the First Draw PPP Loan, is that borrower eligible to apply for a Second Draw PPP Loan?

No. Each applicant for a Second Draw PPP Loan must certify on the Second Draw Borrower Application Form (SBA Form 2483-SD) that the applicant and any owner of 20% or more of the applicant is not presently involved in a bankruptcy proceeding. Thus, a borrower that received a First Draw PPP Loan and files for bankruptcy protection after disbursement of the First Draw PPP Loan is not eligible to apply for a Second Draw PPP Loan.

Is a hedge fund or private equity firm eligible for a PPP loan?

No. Hedge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan.

Affiliation Rules Generally

Are affiliates considered together for purposes of determining eligibility?

In most cases, a borrower will be considered together with its affiliates for purposes of determining eligibility for the PPP.²⁹ Under SBA rules, entities may be considered affiliates based on factors including

²⁹ Paragraph 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv), as added by the CARES Act and amended by the Economic Aid Act, waives the affiliation rules contained in § 121.103 for (1) any business concern with not more than 500 employees that, as of the date on which the loan is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); and (4)(a) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by SBA for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or (b) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151. The new interim final rule has no effect on these statutory waivers, which remain in full force and effect. As a result, the affiliation rules contained in section 121.301 also do not apply to these types of entities. In addition, paragraph 7(a)(36)(D) of the Small Business Act (15 U.S.C. 636(a)(36)(D)), as amended by section 342 of the Economic Aid Act states that, with respect to a business concern made eligible under paragraph 7(a)(36)(D)(iii)(II) or (iv)(IV) (certain news organizations), SBA shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such business concern, is an issuer.

but not limited to stock ownership, overlapping management,³⁰ and identity of interest. See 13 CFR 121.301(f).

The affiliation rule based on ownership (13 C.F.R. 121.301(f)(1)) states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights specified in 13 C.F.R. 121.301(f)(1), the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).

Are borrowers required to apply SBA's affiliation rules under 13 C.F.R. 121.301(f)?

Yes. Borrowers must apply the affiliation rules, including any applicable exceptions or affiliation waivers, set forth in SBA's Interim Final Rule on Affiliation, Interim Final Rule on Treatment of Entities with Foreign Affiliates, the consolidated interim final rule implementing updates to the PPP, and the interim final rule for Second Draw PPP Loans. A borrower must certify on the applicable Borrower Application Form that the borrower is eligible to receive a PPP loan. For a First Draw PPP Loan, that certification means that the borrower has no more than 500 employees, is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632) that meets the applicable SBA employee-based or revenue-based size standard, or meets the tests in SBA's alternative size standard, after applying the affiliation rules, if applicable. (Notwithstanding the foregoing, housing cooperatives, eligible 501(c)(6) organizations, and eligible destination marketing organizations, are eligible for a First Draw PPP Loan only if they employ no more than 300 employees.) For a Second Draw PPP Loan, that certification means the borrower has no more than 300 employees, after applying the affiliation rules, if applicable, and the borrower meets the other eligibility requirements in subsection (c) of the interim final rule for Second Draw PPP Loans. SBA's existing affiliation exclusions apply to the PPP, including, for example the exclusions under 13 CFR 121.103(b)(2).

How do SBA's affiliation rules affect my eligibility and apply to me under the PPP?

An entity generally is eligible for the PPP if it, combined with its affiliates, (i) is a small business as defined in section 3 of the Small Business Act (15 U.S.C. 632), (ii) (1) has 500 or fewer employees or is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry, if higher, and (2) is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a housing cooperative, a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, a section 501(c)(6) organization, a destination marketing organization, or any other business concern, or (iii) has 500 or fewer employees per location (or an applicable SBA employee-based size standard for that industry, if higher) and is either majority owned or controlled by a NAICS code 511110 or 5151 business or is a nonprofit public broadcasting entity with a trade or business under NAICS code 511110 or 5151. Prior to the CARES Act, the nonprofit organizations listed above were not eligible for SBA Business Loan Programs under section 7(a) of the Small Business Act; only for-profit

³⁰ In order to help potential borrowers identify other businesses with which they may be deemed to be affiliated under the common management standard, the Borrower Application Form, SBA Form 2483, released on April 2, 2020, requires applicants to list other businesses with which they have common management (including under a management agreement). The information supplied by the applicant in response to that information request should be used by applicants as they assess whether they have affiliates that should be included in their number of employees reported on SBA Form 2483.

small business concerns were eligible. The CARES Act made such nonprofit organizations not only eligible for the PPP, but also subjected them to SBA's affiliation rules. As amended, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) now provides that the provisions applicable to affiliations under 13 CFR 121.103 apply with respect to nonprofit organizations, housing cooperatives, and veterans organizations in the same manner as with respect to small business concerns. However, the detailed affiliation standards contained in § 121.103 currently do not apply to PPP borrowers, because §121.103(a)(8) provides that applicants in SBA's Business Loan Programs (which include the PPP) are subject to the affiliation rules contained in 13 CFR 121.301.

Faith-Based Organizations

The rule exempts otherwise qualified faith-based organizations from the SBA's affiliation rules, including those set forth in 13 CFR part 121, where the application of the affiliation rules would substantially burden those organizations' religious exercise. For the reasons described in 85 Fed. Reg. 20817, the SBA's affiliation rules, including those set forth in 13 CFR part 121, do not apply to the relationship of any church, convention or association of churches, or other faith-based organization or entity to any other person, group, organization, or entity that is based on a sincere religious teaching or belief or otherwise constitutes a part of the exercise of religion. This includes any relationship to a parent or subsidiary and other applicable aspects of organizational structure or form. A faith-based organization seeking loans under this program may rely on a reasonable, good faith interpretation in determining whether its relationship to any other person, group, organization, or entity is exempt from the affiliation rules under this provision, and SBA will not assess, and will not require participating lenders to assess, the reasonableness of the faith-based organization's determination.

Do the SBA affiliation rules prohibit a portfolio company of a private equity fund from being eligible for a PPP loan?

Borrowers must apply the affiliation rules that appear in 13 CFR 121.301(f), as set forth in the Second PPP Interim Final Rule (85 FR 20817). The affiliation rules apply to private equity-owned businesses in the same manner as any other business subject to outside ownership or control.³¹ However, in addition to applying any applicable affiliation rules, all borrowers should carefully review the required certification on the Paycheck Protection Program Borrower Application Form (SBA Form 2483) stating that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant."

Does participation in an employee stock ownership plan (ESOP) trigger application of the affiliation rules?

No. For purposes of the PPP, a business's participation in an ESOP (as defined in 15 U.S.C. 632(q)(6)) does not result in an affiliation between the business and the ESOP.

How do the \$10 million cap (or \$2 million cap for a Second Draw PPP Loan) and affiliation rules work for franchises?³²

If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its

³¹ However, the CARES Act waives the affiliation rules if the borrower receives financial assistance from an SBA licensed Small Business Investment Company (SBIC) in any amount. This includes any type of financing listed in 13 CFR 107.50, such as loans, debt with equity features, equity, and guarantees. Affiliation is waived even if the borrower has investment from other non-SBIC investors.

³² Revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

franchisees.) The \$10 million cap on First Draw PPP Loans (or \$2 million cap for a Second Draw PPP Loan) is a limit per franchisee entity, and each franchisee is limited to one First Draw and one Second Draw PPP Loan.

Franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

How do the \$10 million cap (or \$2 million cap for a Second Draw PPP Loan) and affiliation rules work for hotels and restaurants (and any business assigned a North American Industry Classification System (NAICS) code beginning with 72)?³³

Any single business entity that is assigned a NAICS code beginning with 72 (including hotels and restaurants) and that employs not more than 500 employees per physical location is eligible to receive a First Draw PPP Loan. For Second Draw PPP Loans, a business that is assigned a NAICS code beginning with 72 may have no more than 300 employees per physical location and other eligibility criteria must be met.

In addition, SBA's affiliation rules (13 CFR 121.103 and 13 CFR 121.301) do not apply to any business entity that is assigned a NAICS code beginning with 72 and that employs not more than a total of 500 employees (or 300 employees for a Second Draw PPP loan). As a result, if each hotel or restaurant location owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees (or 300 employees for a Second Draw PPP loan) is permitted to apply for a separate PPP loan provided it uses its unique EIN.

The \$10 million (or \$2 million for a Second Draw PPP Loan) maximum loan amount limitation applies to each eligible business entity, because individual business entities cannot apply for more than one First Draw or Second Draw PPP Loan. The following examples illustrate how these principles apply.

Example 1. Company X directly owns multiple restaurants and has no affiliates.

- Company X may apply for a First Draw PPP Loan if it employs 500 or fewer employees per location (including at its headquarters), even if the total number of employees employed across all locations is over 500.

Example 2. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y and Company Z each own a single restaurant with 500 or fewer employees.

- Company Y and Company Z can each apply for a separate First Draw PPP Loan, because each has 500 or fewer employees. The affiliation rules do not apply, because Company Y and Company Z each has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).

³³ Revised March 3, 2021 to reflect the interim final rule for Second Draw PPP Loans.

Example 3. Company X wholly owns Company Y and Company Z (as a result, Companies X, Y, and Z are all affiliates of one another). Company Y owns a restaurant with 400 employees. Company Z is a construction company with 400 employees.

- Company Y is eligible for a First Draw PPP Loan because it has 500 or fewer employees. The affiliation rules do not apply to Company Y, because it has 500 or fewer employees and is in the food services business (with a NAICS code beginning with 72).
- The waiver of the affiliation rules does not apply to Company Z, because Company Z is in the construction industry. Under SBA's affiliation rules, 13 CFR 121.301(f)(1) and (3), Company Y and Company Z are affiliates of one another because they are under the common control of Company X, which wholly owns both companies. This means that the size of Company Z is determined by adding its employees to those of Companies X and Y. Therefore, Company Z is deemed to have more than 500 employees, together with its affiliates. However, Company Z may be eligible to receive a First Draw PPP Loan as a small business concern if it, together with Companies X and Y, meets SBA's other applicable size standards.

I have determined that I am eligible. How much can I borrow?

Under the PPP, the maximum loan amount for First Draw PPP Loans is the lesser of \$10 million or an amount that you will calculate using a payroll-based formula authorized by the Act, as explained below.³⁴ PPP loans approved in 2020 used 2019 or the 1-year before the date on which the loan is made to calculate payroll costs for purposes of calculating the maximum loan amount. Borrowers who apply for PPP loans 2021 and who are not self-employed (including sole proprietorships and independent contractors) are also permitted to use the precise 1-year period before the date on which the loan is made to calculate payroll costs if they choose not to use 2019 or 2020. Since most borrowers will use 2019 or 2020 the rule text refers only to 2019 or 2020 for simplicity and readability.

*See also section regarding How to Calculate Loan Amounts for First Draw PPP Loans

How do I calculate the maximum amount I can borrow?

The following methodology, which is one of the methodologies authorized by the Act, will be most useful for many applicants.

Step 1: Aggregate payroll costs (defined in detail later in this FAQ) from 2019 or 2020 for employees whose principal place of residence is the United States.

Step 2: Subtract any compensation paid to an employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred.³⁵

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

³⁴ See questions regarding maximum loan amount applicable to certain farmers and ranchers. For the maximum loan amount for Second Draw PPP Loans, see the separate interim final rule on Second Draw PPP Loans.

³⁵ See other sections for treatment of amounts paid to independent contractors.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

The examples below illustrate this methodology.

Example 1 – No employees make more than \$100,000

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Maximum loan amount is \$25,000

Example 2 – Some employees make more than \$100,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Maximum loan amount is \$250,000

Example 3 – No employees make more than \$100,000, outstanding EIDL loan of \$10,000.

Annual payroll: \$120,000

Average monthly payroll: \$10,000

Multiply by 2.5 = \$25,000

Add EIDL loan of \$10,000 = \$35,000

Maximum loan amount is \$35,000

Example 4 – Some employees make more than \$100,000, outstanding EIDL loan of \$10,000

Annual payroll: \$1,500,000

Subtract compensation amounts in excess of an annual salary of \$100,000: \$1,200,000

Average monthly qualifying payroll: \$100,000

Multiply by 2.5 = \$250,000

Add EIDL loan of \$10,000 = \$260,000

Maximum loan amount is \$260,000

You must provide your Form 941 (or other tax forms containing similar information) and state quarterly wage unemployment insurance tax reporting forms from each quarter in 2019 or 2020 (whichever you used to calculate loan amount), or equivalent payroll processor records, along with evidence of any retirement and health insurance contributions. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation on February 15, 2020.³⁶

³⁶ This subsection clarifies the documentation that must be submitted with an applicant’s loan application to substantiate the borrower’s payroll costs. This requirement applies to loans made after December 27, 2020. For documentation requirements for PPP loans made before December 27, 2020, see 85 Fed. Reg. 20811, subsection III.1.e. (April 15, 2020).

I am self-employed and have no employees, how do I calculate my maximum First Draw PPP Loan amount? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent by the borrower during the covered period following disbursement of the PPP loan.)

**The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation.³⁷

The following methodology should be used to calculate the maximum amount that can be borrowed if you are self-employed and have no employees, and your principal place of residence is in the United States, including if you are an independent contractor or operate a sole proprietorship (but not if you are a partner in a partnership):

- **Step 1:** Find your 2019 IRS Form 1040 Schedule C line 31 net profit amount.³⁸ If this amount is over \$100,000, reduce it to \$100,000. If this amount is zero or less, you are not eligible for a PPP loan.
- **Step 2:** Calculate the average monthly net profit amount (divide the amount from Step 1 by 12).
- **Step 3:** Multiply the average monthly net profit amount from Step 2 by 2.5.
- **Step 4:** Add the outstanding amount of any Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

Your 2019 IRS Form 1040 Schedule C must be provided to substantiate the applied-for PPP loan amount. You must also provide a 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), IRS Form 1099-K, invoice, bank statement, or book of record establishing you were self-employed in 2019 and a 2020 invoice, bank statement, or book of record establishing you were in operation on February 15, 2020.

I am self-employed and have employees, how do I calculate my maximum First Draw PPP Loan amount (up to \$10 million)? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent by the borrower during the covered period following disbursement of the PPP loan.)

**The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation.³⁹

The following methodology should be used to calculate the maximum amount that can be borrowed if you are self-employed with employees, including if you are an independent contractor or operate a sole proprietorship (but not if you are a partner in a partnership):

- **Step 1:** Compute your 2019 payroll costs by adding the following:

³⁷ All components of payroll costs must be from the same calendar year. Payroll costs, including for covered benefits, can only be included for employees whose principal place of residence is in the United States.

³⁸ If you are using 2020 amounts and have not yet completed a 2020 return, fill out the required portions and compute the values.

³⁹ All components of payroll costs must be from the same calendar year. Payroll costs, including for covered benefits, can only be included for employees whose principal place of residence is in the United States.

- 2019 IRS Form 1040 Schedule C line 31 net profit amount:
 - if this amount is over \$100,000, reduce it to \$100,000,
 - if this amount is less than zero, set this amount at zero;

 - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
 - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5ccolumn 1) from each quarter,
 - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, and
 - Minus (i) any amount paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the United States;

 - 2019 employer contributions for employee group health, life, disability, vision, and dental insurance (the portion of IRS Form 1040 Schedule C line 14 attributable to those contributions);

 - 2019 employer contributions to employee retirement plans (IRS Form 1040 Schedule C line 19); and

 - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs amount (divide the amount from Step 1 by 12).

 - **Step 3:** Multiply the average monthly payroll costs amount from Step 2 by 2.5.

 - **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

Your 2019 IRS Form 1040 Schedule C, IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with documentation of any retirement or group health, life, disability, vision, and dental contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

How does a seasonal employer calculate the maximum PPP loan amount?⁴⁰

As defined by section 315 of the Economic Aid Act, a borrower is a seasonal employer if it does not operate for more than 7 months in any calendar year or, during the preceding calendar year, it had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts for the other 6 months of that year. Under section 336 of the Economic Aid Act, a seasonal employer must determine its maximum loan amount for purposes of the PPP by using the employer's average total monthly payments for payroll for any 12-week period selected by the seasonal employer beginning February 15, 2019, and ending February 15, 2020.

Can a seasonal employer that received a First Draw PPP Loan in 2020 and elected to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its maximum PPP loan amount under the interim final rule issued by Treasury on April 27, 2020, make all the required certifications on the Borrower Application Form?⁴¹

Yes. The 2020 First Draw PPP Loan Borrower Application Form required applicants to certify that "The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program." On April 27, 2020, Treasury issued an interim final rule allowing seasonal borrowers to use an alternative base period for purposes of calculating the loan amount for which they are eligible under the PPP. For First Draw PPP Loans made before December 27, 2020, an applicant that was otherwise in compliance with applicable SBA requirements, and that complied with Treasury's interim final rule on seasonal workers, will be deemed eligible for a PPP loan under SBA rules. Instead of following the instructions on page 3 of the Borrower Application Form (April 2, 2020 version) for the time period for calculating average monthly payroll for seasonal businesses, an applicant may have elected to use the time period in Treasury's interim final rule on seasonal workers.

⁴⁰ This subsection has been added to conform to section 336 of the Economic Aid Act. Except for loans made pursuant to section 7(a)(36) of the Small Business Act for which SBA has remitted a loan forgiveness payment to the lender before December 27, 2020, it is effective as if included in the CARES Act and applies to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan. Previous guidance issued for seasonal employers stated as follows: "Under section 1102 of the CARES Act, a seasonal employer may determine its maximum loan amount for purposes of the PPP by reference to the employer's average total monthly payments for payroll 'the 12-week period beginning February 15, 2019, or at the election of the eligible [borrower], March 1, 2019, and ending June 30, 2019.' Under this interim final rule issued pursuant to section 1109 of the Act, a seasonal employer may alternatively elect to determine its maximum loan amount as the average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019." 85 Fed. Reg. 23917 (April 30, 2020).

⁴¹ Revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP. This FAQ applies only to First Draw PPP Loans made before December 27, 2020. Seasonal employers that receive a PPP loan in 2021 must calculate payroll costs using average monthly payroll for any 12-week period between February 15, 2019 and February 15, 2020.

I am a self-employed farmer or rancher who reports my income on IRS Form 1040 Schedule F⁴². What documentation must I provide in place of Schedule C and how should my maximum loan amount be determined (up to \$10 million)?

Self-employed farmers and ranchers (i.e., those who report their net farm profit on IRS Form 1040 Schedule 1 and Schedule F) should use IRS Form 1040 Schedule F in lieu of Schedule C.

The calculation for self-employed farmers and ranchers without employees is the same as for Schedule C filers that have no employees, except that Schedule F line 9 (gross income) should be used to determine the loan amount rather than Schedule C line 31 (net profit).

The calculation for self-employed farmers and ranchers with employees is the same as for Schedule C filers that have employees with several exceptions. First, in place of Schedule C line 31 (net profit), the difference between Schedule F line 9 (gross income) and the sum of Schedule F lines 15, 22, and 23 (for employee payroll) should be used. Second, employer contributions for employee group health, life, disability, vision, and dental insurance (portion of Schedule F line 15 attributable to those contributions) and employer contributions for employee retirement contributions (Schedule F line 23) should be used in place of those respective lines on Schedule C.

The documentation requirements are the same as for Schedule C filers except the 2019 IRS Form 1040 Schedule 1 and Schedule F must be included with the loan application in place of IRS Form 1040 Schedule C. Additionally, for farmers and ranchers with employees, IRS Form 943 should be provided in addition to, or in place of, IRS Form 941, as applicable.

How do partnerships apply for PPP loans, and how is the maximum First Draw PPP Loan amount calculated for partnerships (up to \$10 million)? Should partners' self-employment income be included on the business entity level PPP loan application or on separate PPP loan applications for each partner? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent during the covered period following disbursement of the PPP loan.)

**The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation.⁴³

The following methodology should be used to calculate the maximum amount that can be borrowed for partnerships (partners' self-employment income should be included on the partnership's PPP loan application; individual partners may not apply for separate PPP loans):

- **Step 1:** Compute 2019 payroll costs by adding the following:

⁴² This subsection has been added to conform to section 313 of the Economic Aid Act. This provision applies to a farmer or rancher who (1) operates as a sole proprietorship, an independent contractor, or is an eligible self-employed individual; (2) reports farm income or expenses on a Schedule F (or any equivalent successor schedule); and (3) was in business as of February 15, 2020. This provision is effective as if included in the CARES Act and applies to any loan made before, on, or after December 27, 2020, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan.

⁴³ All components of payroll costs must be from the same calendar year. Payroll costs, including for covered benefits, can only be included for employees whose principal place of residence is in the United States.

- 2019 Schedule K-1 (IRS Form 1065) Net earnings from self-employment of individual U.S.-based general partners that are subject to self-employment tax, multiplied by 0.9235,⁴⁴ up to \$100,000 per partner.⁴⁵
 - Compute the net earnings from self-employment of individual U.S.-based general partner that are subject to self-employment tax from box 14a of IRS Form 1065 Schedule K-1 and subtract (i) any section 179 expense deduction claimed in box 12; (ii) any unreimbursed partnership expenses claimed; and (iii) any depletion claimed on oil and gas properties;
 - if this amount is over \$100,000, reduce it to \$100,000;
 - if this amount is less than zero, set this amount at zero;
 - 2019 gross wages and tips paid to employees whose principal place of residence is in the United States (if any), up to \$100,000 per employee, which can be computed using:
 - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c column 1) from each quarter,
 - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, and
 - Minus any amounts paid to any individual employee in excess of \$100,000 and any amounts paid to any employee whose principal place of residence is outside the United States;
 - 2019 employer contributions for employee (but not partner) group health, life, disability, vision, and dental insurance, if any (portion of IRS Form 1065 line 19 attributable to those contributions);
 - 2019 employer contributions to employee (but not partner) retirement plans, if any (IRS Form 1065 line 18); and
 - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms), if any.
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
 - **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.
 - **Step 4:** Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The partnership's 2019 IRS Form 1065 (including K-1s) must be provided to substantiate the applied-for First Draw PPP Loan amount. If the partnership has employees, other relevant supporting documentation, including the 2019 IRS Form 941 and state quarterly wage unemployment insurance tax

⁴⁴ This treatment follows the computation of self-employment tax from IRS Form 1040 Schedule SE Section A line 4 and removes the "employer" share of self-employment tax, consistent with how payroll costs for employees in the partnership are determined.

⁴⁵ If the partnership is using 2020 payroll costs and the Form 1065 for 2020 has not yet been completed, fill out the form.

reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements) along with records of any retirement or group health, life, disability, vision, and dental insurance contributions must also be provided to substantiate the First Draw PPP Loan amount. If the partnership has employees, a payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish the partnership was in operation and had employees on that date. If the partnership has no employees, an invoice, bank statement, or book of record establishing the partnership was in operation on February 15, 2020 must instead be provided.

How is the maximum First Draw PPP Loan amount calculated for S corporations and C corporations (up to \$10 million)? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent during the covered period following disbursement of the PPP loan.)

**The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation.⁴⁶

The following methodology should be used to calculate the maximum amount that can be borrowed for corporations, including S and C corporations:

- **Step 1:** Compute 2019 payroll costs by adding the following:
 - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
 - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c- As of January 17, 2021 column 1) from each quarter,
 - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips,
 - Minus (i) any amounts paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the United States;
 - 2019 employer group health, life, disability, vision, and dental insurance contributions (portion of IRS Form 1120 line 24 or IRS Form 1120-S line 18 attributable to those contributions);⁴⁷
 - 2019 employer retirement contributions (IRS Form 1120 line 23 or IRS Form 1120-S line 17); and
 - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5

⁴⁶ All components of payroll costs must be from the same calendar year. Payroll costs, including for covered benefits, can only be included for employees whose principal place of residence is in the United States.

⁴⁷ Note that employer contributions for group health, life, disability, vision, and dental insurance for S-Corporation employees who own more than a 2 percent stake in the business (or employees who are family members of such owners) are not included in this figure as such contributions are already included in gross wages.

- **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The corporation's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed business tax return (IRS Form 1120 or IRS 1120-S) or other documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

How is the maximum First Draw PPP Loan amount calculated for eligible nonprofit organizations (up to \$10 million)? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent during the covered period following disbursement of the PPP loan.)

**The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation.⁴⁸

The following methodology should be used to calculate the maximum amount that can be borrowed for eligible nonprofit organizations (eligible nonprofit religious institutions or other eligible nonprofits without an IRS Form 990 filing requirement, see the next question):

- **Step 1:** Compute 2019 payroll costs by adding the following:
 - 2019 gross wages and tips paid to your employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
 - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5ccolumn 1) from each quarter,
 - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, and
 - Minus (i) any amounts paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the U.S.;
 - 2019 employer group health, life, disability, vision, and dental insurance contributions (portion of IRS Form 990 Part IX line 9 attributable to those contributions);
 - 2019 employer retirement contributions (IRS Form 990 Part IX line 8); and
 - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms).
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12).
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.

⁴⁸ All components of payroll costs must be from the same calendar year. Payroll costs, including for covered benefits, can only be included for employees whose principal place of residence is in the United States.

- **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The nonprofit organization's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with the filed IRS Form 990 Part IX or other documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date. Eligible nonprofits that file IRS Form 990-EZ should rely on that form and those that do not file an IRS Form 990 or 990-EZ, typically those with gross receipts less than \$50,000, should see the next question.

How is the maximum First Draw PPP Loan amount calculated for eligible nonprofit religious institutions, veterans organizations, and tribal businesses (up to \$10 As of January 17, 2021 million)? (Note that PPP loan forgiveness amounts will depend, in part, on the total amount spent during the covered period following disbursement of the PPP loan.)

**The guidance describes payroll costs using calendar year 2019 as the reference period for payroll costs used to calculate loan amounts. However, borrowers are permitted to use payroll costs from either calendar year 2019 or calendar year 2020 for their First Draw PPP Loan amount calculation.⁴⁹

The following methodology should be used to calculate the maximum amount that can be borrowed for eligible nonprofit religious institutions, veterans organizations and tribal businesses:

- **Step 1:** Compute 2019 payroll costs by adding the following:
 - 2019 gross wages and tips paid to employees whose principal place of residence is in the United States, up to \$100,000 per employee, which can be computed using:
 - 2019 IRS Form 941 Taxable Medicare wages & tips (line 5ccolumn 1) from each quarter,
 - Plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages & tips, and
 - Minus (i) any amounts paid to any individual employee in excess of \$100,000, and (ii) any amounts paid to any employee whose principal place of residence is outside the United States;
 - 2019 employer group health, life, disability, vision, and dental insurance contributions;
 - 2019 employer retirement contributions; and
 - 2019 employer state and local taxes assessed on employee compensation, primarily state unemployment insurance tax (from state quarterly wage reporting forms)

⁴⁹ All components of payroll costs must be from the same calendar year. Payroll costs, including for covered benefits, can only be included for employees whose principal place of residence is in the United States.

- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 12)
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5
- **Step 4:** Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

The entity's 2019 IRS Form 941 and state quarterly wage unemployment insurance tax reporting form from each quarter (or equivalent payroll processor records or IRS Wage and Tax Statements), along with documentation of any retirement and group health, life, disability, vision, and dental insurance contributions, must be provided to substantiate the applied-for PPP loan amount. A payroll statement or similar documentation from the pay period that covered February 15, 2020 must be provided to establish you were in operation and had employees on that date.

I am an LLC owner. Which set of instructions applies to me?

LLCs should follow the instructions that apply to their tax filing status in the reference period used to calculate payroll costs (2019 or 2020)—i.e., whether the LLC filed (or will file) as a sole proprietor, a partnership, or a corporation in the reference period.

What other documentation can an applicant provide for the purpose of substantiating payroll costs used to calculate the applied-for First Draw PPP Loan amount?

An applicant may provide IRS Form W-2s and IRS Form W-3 or payroll processor reports, including quarterly and annual tax reports, in lieu of IRS Form 941. Additionally, very small businesses that file an annual IRS Form 944 or agricultural employers that file an annual IRS Form 943 should rely on and provide IRS Form 944 or IRS Form 943 in lieu of IRS Form 941. An applicant may provide records from a retirement administrator to document employer retirement contributions. An applicant may also provide records from a health insurance company or third-party administrator for a self-insured plan to document employer health insurance contributions.

What if an eligible borrower contracts with a third-party payer such as a payroll provider or a Professional Employer Organization (PEO) to process payroll and report payroll taxes?

SBA recognizes that eligible borrowers that use PEOs or similar payroll providers are required under some state registration laws to report wage and other data on the Employer Identification Number (EIN) of the PEO or other payroll provider. In these cases, payroll documentation provided by the payroll provider that indicates the amount of wages and payroll taxes reported to the IRS by the payroll provider for the borrower's employees will be considered acceptable PPP loan payroll documentation. Relevant information from a Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers, attached to the PEO's or other payroll provider's Form 941, Employer's Quarterly Federal Tax Return, should be used if it is available; otherwise, the eligible borrower should obtain a statement from the payroll provider documenting the amount of wages and payroll taxes. In addition, employees of the eligible borrower will not be considered employees of the eligible borrower's payroll provider or PEO.

I am a corporation or nonprofit and was in operation on February 15, 2020, but was not in operation between February 15, 2019, and June 30, 2019. What reference period should I be using to compute my First Draw PPP Loan amount?

In this case, you may choose one of two ways to calculate your First Draw PPP Loan amount. The first option is for borrowers to follow the applicable instructions in Questions 5, 6, 7 and use payroll

information for all of 2020 instead of 2019. The second option is for borrowers to calculate their loan amount using their average monthly payroll costs incurred in January and February 2020. For borrowers choosing the second option, the following methodology should be used to calculate the maximum amount that you can borrow:

- **Step 1:** Compute January and February 2020 payroll costs by adding the following:
 - Gross pay to employees for those two months whose principal place of residence is in the United States, up to \$16,667 per employee;
 - Employer group health, life, disability, vision, and dental insurance contributions for those two months;
 - Employer retirement contributions for those two months; and
 - Employer state and local taxes assessed on employee compensation for those two months, primarily state unemployment insurance tax.
- **Step 2:** Calculate the average monthly payroll costs (divide the amount from Step 1 by 2)
- **Step 3:** Multiply the average monthly payroll costs from Step 2 by 2.5.
- **Step 4:** Add any outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance. Do not include the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

If you choose the second option, you must provide payroll records from January and February 2020, your IRS Form 941 for the first quarter of 2020, and documentation of any employer retirement and group health, life, disability, vision, and dental insurance contributions from that period.

I am self-employed (or a partnership) and was in operation on February 15, 2020, but was not in operation between February 15, 2019, and June 30, 2019. I have filed or will file a Form 1040 Schedule C or Schedule F (or Form 1065) for 2020. What reference period should I be using to compute my First Draw PPP Loan amount?

In this case, you may choose one of two ways to calculate your First Draw PPP Loan amount. The first option is for borrowers to follow the applicable instructions in Question 1 through 4 and use payroll information for all of 2020 instead of 2019. The second option is for borrowers to calculate their loan amount using their average monthly payroll costs incurred in January and February 2020. For borrowers choosing the second option, the following methodology should be used by Schedule C filers to calculate the maximum amount that you can borrow:

- **Step 1:** Fill out an IRS Form 1040 Schedule C for January and February 2020. The entries on the schedule must reflect all business income and expenses from those two months, with the exception that on Schedule C line 13:
 - you must include only 1/6 of the amount of any annual depreciation and section 179 expense deduction attributable to investment made in those months, and

- you must include 1/6 of the amount of the 2020 depreciation deduction attributable to investment made in prior years.
- **Step 2:** Take the net profit amount for January and February on Schedule C line 31.
 - If this amount is more than \$16,667 for the two months combined, set it to \$16,667.
 - If this amount is less than 0 for the two months combined, set it to 0.
- **Step 3:** If you have employees, add your employee payroll costs for January and February 2020 to the result in Step 2. Only include payroll costs for those employees whose principal place of residence is in the United States and up to \$16,667 of gross pay per employee.
- **Step 4:** Divide the total by 2, and then multiply it by 2.5.
- **Step 5:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

Your IRS Form 1040 Schedule C as completed must be provided to your lender when you apply for a PPP loan. This information should be consistent with what you will submit to the IRS and must be true and accurate in all material respects. You must also supply bank statements from your business account(s) for the months of January and February 2020 to substantiate your net profit amount from Schedule C. If you have employees, you also must provide payroll records from those two months, your IRS Form 941 for the first quarter of 2020, and documentation of any employer retirement and group health, life, disability, vision, and dental insurance contributions made on behalf of employees.

Schedule F filers should use the same methodology as above but complete a Schedule F in Step 1 and replace net profit from Step 2 with the gross income amount on Schedule F line 9 (if no employees) or the difference between the gross profit amount on Schedule F line 9 and employee payroll costs from the sum of Schedule F lines 15, 22, and 23 (if you have employees). Documentation requirements are the same as above except Schedule F as completed must be provided in place of Schedule C. Partnerships should use the same methodology as above but complete a Form 1065 in Step 1 and replace net profit from Step 2 with the net earnings from self-employment for each individual U.S.-based general partners (the difference between box 14a of IRS Form 1065 K-1 and the sum of (i) any section 179 expense deduction claimed in box 12; (ii) any unreimbursed partnership expenses claimed; and (iii) any depletion claimed on oil and gas properties) multiplied 0.9235. Documentation requirements are the same as above except Form 1065 as completed must be provided in place of Schedule C.

Is there existing guidance to help PPP applicants and lenders determine whether an individual employee’s principal place of residence is in the United States?

PPP applicants and lenders may consider IRS regulations (26 CFR § 1.121-1(b)(2)) when determining whether an individual employee’s principal place of residence is in the United States.

In addition to pre-tax employee contributions for health insurance, what are the other pre-tax employee contributions for fringe benefits that may have been excluded from IRS Form 941 Taxable Medicare wages & tips that is part of employee gross pay?

Employee contributions and deductions from pay for flexible spending arrangements (FSA) or other nontaxable benefits under a section 125 cafeteria plan, qualified transit or parking benefits (up to \$270

a month), and group life insurance (for up to \$50,000 of coverage) may have been excluded from IRS Form 941 Taxable Medicare wages & tips. However, pre-tax employee contributions to retirement plans are included in Taxable Medicare wages & tips and should not be added to that figure to arrive at gross pay.

How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?⁵⁰

Payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax. For example, an employee who earned \$4,000 per month in gross wages, from which \$500 in federal taxes was withheld, would count as \$4,000 in payroll costs. The employee would receive \$3,500, and \$500 would be paid to the federal government. However, the employer-side federal payroll taxes imposed on the \$4,000 in wages are excluded from payroll costs under the statute.⁵¹

Is there a limit on the dollar amount of First Draw PPP Loans a corporate group can receive?

Yes, businesses that are part of the same corporate group cannot receive First Draw PPP Loans in a total amount of more than \$20 million. For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent.

What qualifies as "payroll costs?"

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance,⁵² including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an

⁵⁰ Revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

⁵¹ The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period" defined as February 15, 2020 to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period during which borrowers will be subject to the restrictions on allowable uses of the loans, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

⁵² This provision has been modified to conform to section 308 of the Economic Aid Act. This revision is effective as if included in the CARES Act and applies to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan.

independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

Do PPP loans cover paid sick leave?

Yes. PPP loans cover payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127). Learn more about the Paid Sick Leave Refundable Credit: <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Does the cost of a housing stipend or allowance provided to an employee as part of compensation count toward payroll costs?

Payroll costs includes all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.

Is there anything that is expressly excluded from the definition of payroll costs?

Yes. The Act expressly excludes the following:

- Any compensation of an employee whose principal place of residence is outside of the United States;
- The compensation of an individual employee in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred;
- Federal employment taxes imposed or withheld during the applicable period, including the employee’s and employer’s share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116–127).

Section 7(a)(36)(A)(viii)(II) of the Small Business Act excludes from the definition of payroll costs any employee compensation in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred. Does that exclusion apply to all employee benefits of monetary value?⁵³

No. The exclusion of compensation in excess of \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care or group life, disability, vision, or dental insurance coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

⁵³ Revised March 3, 2021 to conform to subsection B.4.h.ii. of the consolidated interim final rule implementing updates to the PPP.

Should payments that an eligible borrower made to an independent contractor or sole proprietor be included in calculations of the eligible borrower's payroll costs?⁵⁴

No. Any amounts that an eligible borrower has paid to an independent contractor or sole proprietor should be excluded from the eligible business's payroll costs, except for fishing boat owners as permitted by PPP interim final rules. However, an independent contractor or sole proprietor will itself be eligible for a loan under the PPP, if it satisfies the applicable requirements.

May fishing boat owners include payroll costs in their PPP loan applications that are attributable to crewmembers described in section 3121(b)(20) of the Internal Revenue Code?

Yes. A fishing boat owner may include compensation reported on Box 5 of IRS Form 1099-MISC and paid to a crewmember described in section 3121(b)(20) of the Code, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, as a payroll cost in its PPP loan application.

Do payments required for the provision of group health care benefits including insurance premiums, include vision and dental benefits?

Yes. Section 308 of the Economic Aid Act specifies that payroll costs include employer contributions for group life, disability, vision, and dental insurance benefits.

Do independent contractors count as employees for purposes of PPP loan calculations?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan calculation.⁵⁵

Do student workers count when determining the number of employees for PPP loan eligibility?

Yes. Student workers generally count as employees, unless (a) the applicant is an institution of higher education, as defined in the Department of Education's Federal Work-Study regulations, 34 C.F.R. 675.2, and (b) the student worker's services are performed as part of a Federal Work-Study Program (as defined in those regulations⁵⁶) or a substantially similar program of a State or political subdivision thereof. Institutions of higher education must exclude work study students when determining the number of employees for PPP loan eligibility, and must also exclude payroll costs for work study students from the calculation of payroll costs used to determine their PPP loan amount.

What is the interest rate on a PPP loan?

The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.⁵⁷

⁵⁴ Revised March 3, 2021 to incorporate the exception for fishing boat owners.

⁵⁵ See also FAQ regarding fishing boat owners including payroll costs for their crewmembers in the calculation of the PPP loan amount.

⁵⁶ The Department of Education's Federal Work-Study Programs described at 34 CFR Part 675 are (1) the Federal Work-Study Program, (2) the Job Location and Development Program, and (3) Work Colleges Program.

⁵⁷ Revised to conform to section 339 of the Economic Aid Act. The revision applies to PPP loans made on or after December 27, 2020, but may apply with respect to a PPP loan made before that date upon the mutual agreement of the lender and the borrower. A one percent interest rate provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary period of economic dislocation caused by the coronavirus. Second, for lenders, the 100 basis points offers an attractive interest rate relative to the cost of funding for comparable maturities.

What is the maturity date on a PPP loan?

If a PPP loan received an SBA loan number on or after June 5, 2020, the loan has a five-year maturity. If a PPP loan received an SBA loan number before June 5, 2020, the loan has a two-year maturity, unless the borrower and lender mutually agree to extend the term of the loan to five years. The promissory note for the PPP loan will state the term of the loan.

Can I apply for more than one First Draw PPP Loan?⁵⁸

No. Except as set forth in subsection D of this FAQ, SBA, in consultation with Treasury, determined that no eligible borrower may receive more than one First Draw PPP Loan. This means that if you apply for a PPP loan you should consider applying for the maximum amount. Any borrower who received a PPP loan in 2020 received a First Draw PPP Loan and is not eligible to receive another First Draw PPP Loan, but may be eligible for a second draw PPP loan.⁵⁹

Can I use e-signatures or e-consents if a borrower has multiple owners?

Yes, e-signature or e-consents can be used regardless of the number of owners.

When will I have to begin paying principal and interest on my PPP loan?

If you submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you will not have to make any payments of principal or interest on your loan before the date on which SBA remits the loan forgiveness amount on your loan to your lender (or notifies your lender that no loan forgiveness is allowed).

Your “loan forgiveness covered period” is the period beginning on the date the lender disburses the PPP loan and ending on any date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement and (ii) ending on the date that is 24 weeks after the date of disbursement. Your lender must notify you of remittance by SBA of the loan forgiveness amount (or notify you that SBA determined that no loan forgiveness is allowed) and the date your first payment is due. Interest continues to accrue during the deferment period.

If you do not submit to your lender a loan forgiveness application within 10 months after the end of your loan forgiveness covered period, you must begin paying principal and interest after that period. For example, if a borrower’s PPP loan is disbursed on January 25, 2021, the 24-week period ends on July 12, 2021. If the borrower does not submit a loan forgiveness application to its lender by May 12, 2022, the borrower must begin making payments on or after May 12, 2022.

What forms do I need and how do I submit an application for a PPP loan?

The applicant must submit Paycheck Protection Program Borrower Application Form (SBA Form 2483), or lender’s equivalent form, and payroll documentation, as described above. The lender must submit SBA Form 2484, Paycheck Protection Program Lender’s Application for 7(a) Loan Guaranty, electronically in accordance with program requirements and maintain the forms and supporting documentation in its files.

⁵⁸ PPP borrowers may be eligible for a loan under section 7(a)(37) of the Small Business Act, “Paycheck Protection Program Second Draw Loans,” see interim final rule on Second Draw PPP Loans.

⁵⁹ See interim final rule on Second Draw PPP Loans for eligibility criteria for Second Draw PPP Loans.

How can PPP loans be used?

The proceeds of a PPP loan are to be used for:

- payroll costs (as defined in the CARES Act, Economic Aid Act and the interim final rule);
- costs related to the continuation of group health care, life, disability, vision, or dental benefits during periods of paid sick, medical, or family leave, and group health care, life, disability, vision, or dental insurance premiums;
- mortgage interest payments (but not mortgage prepayments or principal payments);
- rent payments;
- utility payments;
- interest payments on any other debt obligations that were incurred before February 15, 2020;
- refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020;⁶⁰
- covered operations expenditures (payments for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records, and expenses);⁶¹
- covered property damage costs (costs related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation);
- covered supplier costs (expenditures made by a borrower to a supplier of goods for the supply of goods that—(A) are essential to the operations of the borrower at the time at which the expenditure is made; and (B) is made pursuant to a contract, order, or purchase order—(i) in effect at any time before the covered period with respect to the applicable covered loan; or (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan); and
- covered worker protection expenditures ((A) operating or a capital expenditures to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government, during the period beginning on March 1, 2020 and ending the date on which the national emergency with respect to the COVID-19 expires related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19; (B) such expenditures may include—(i) the purchase, maintenance, or renovation of assets that create or expand—(I) a drive-through window facility; (II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (III) a physical barrier such as a sneeze guard; (IV) an expansion of additional indoor, outdoor, or combined business space; (V) an onsite or offsite health screening capability; or (VI) other assets relating to the compliance with the requirements or guidance described in

⁶⁰ Under paragraph 7(a)(36)(Q) of the Small Business Act, as amended by section 341 of the Economic Aid Act, an EIDL loan used for purposes other than paying payroll costs and other eligible PPP expenditures is not considered a duplication of the assistance available under the PPP.

⁶¹ This and the next three bullet items were added to conform to section 304 of the Economic Aid Act. The provisions are effective as if included in the CARES Act and apply to any loan made before, on, or after December 27, 2020, including forgiveness of such loan, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan. Section 1106 of the CARES Act (15 U.S.C. 9005) was redesignated as section 7A, transferred to the Small Business Act (15 U.S.C. 631 et seq.), and inserted so as to appear after section 7 of the Small Business Act (15 U.S.C. 636) in section 304(b) of the Economic Aid Act.

subparagraph (A), as determined by SBA in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (ii) the purchase of—(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation; (II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or (III) other kinds of personal protective equipment, as determined by SBA in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (C) such expenditures do not include residential real property or intangible property).

At least 60 percent of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any EIDL refinanced will be included. For purposes of loan forgiveness, however, the borrower will have to document the proceeds used for payroll costs in order to determine the amount of forgiveness. While the Act provides that PPP loan proceeds may be used for the purposes listed above and for other allowable uses described in section 7(a) of the Small Business Act (15 U.S.C. 636(a)), SBA believes that finite appropriations and the structure of the Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs, consistent with Congress' overarching goal of keeping workers paid and employed. This percentage is consistent with the limitation on the forgiveness amount set forth in the Flexibility Act. The limitation on use of the loan funds will help to ensure that the finite appropriations available for these loans are directed toward payroll protection, as each loan that is issued depletes the appropriation, regardless of whether portions of the loan are later forgiven.

How can PPP loans be used by individuals with income from self-employment who file a Form 1040, Schedule C?

The proceeds of a PPP loan are to be used for the following.

- Owner compensation replacement, calculated based on 2019 or 2020 (using the same year that was used to calculate the loan amount) net profit as described above.
- Employee payroll costs (as defined above) for employees whose principal place of residence is in the United States, if you have employees.
- Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business), business rent payments (e.g., the warehouse where you store business equipment or the vehicle you use to perform your business), and business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). You must have claimed or be entitled to claim a deduction for such expenses on your 2019 or 2020 (whichever you used to calculate loan amount) Form 1040 Schedule C for them to be a permissible use. For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 or 2020 Form 1040 Schedule C, you cannot use the proceeds for utilities.
- Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 (maturity will be reset to PPP's maturity of two years for PPP loans made before June 5, 2020 unless the

borrower and lender mutually agree to extend the maturity of such loans to five years, or PPP's maturity of five years for PPP loans made on or after June 5).⁶²

- Covered operations expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.
- Covered property damage costs, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.
- Covered supplier costs, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.
- Covered worker protection expenditures, as defined in section 7A(a) of the Small Business Act, to the extent they is deductible on Form 1040 Schedule C.⁶³

SBA, in consultation with the Treasury, determined that it is appropriate to limit self-employed individuals' (who file a Form 1040 Schedule C) use of loan proceeds to those types of allowable uses for which the borrower made expenditures in 2019 or 2020 or that were used on covered property damage, as defined in section 7A(a). SBA has determined that this limitation on self-employed individuals who file a Form 1040 Schedule C is consistent with the borrower certification required by the Act; specifically, that the PPP loan is necessary "to support the ongoing operations" of the borrower. SBA and Treasury thus believe that this limitation is consistent with the structure of the Act to maintain existing operations and payroll and not for business expansion. The limitation on the use of PPP loan proceeds will also help to ensure that the finite appropriations available for these loans are directed toward maintaining existing operations and payroll, as each loan that is made depletes the appropriation.

Can PPP proceeds be used for lobbying activities or expenditures?

No. None of the proceeds of a PPP loan may be used for (1) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602); (2) lobbying expenditures related to a State or local election; or (3) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

What happens if PPP loan funds are misused?

If you use PPP funds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.

What certifications need to be made?

On the PPP borrower application, an authorized representative of the applicant must

⁶² Under section 7(a)(36)(Q) of the Small Business Act, as amended by section 341 of the Economic Aid Act, an EIDL loan used for purposes other than paying payroll costs and other eligible PPP expenditures is not considered a duplication of the assistance available under the PPP.

⁶³ This and the three preceding bullet items were added to conform to section 304 of the Economic Aid Act. These provisions are effective as if included in the CARES Act and apply to any loan made before, on, or after December 27, 2020, including forgiveness of such loan, unless SBA has remitted a loan forgiveness payment to the lender on the PPP loan.

certify in good faith to all of the below:⁶⁴

- The Applicant was in operation on February 15, 2020, has not permanently closed, and was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees, or had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.
- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.
- The funds will be used to retain workers and maintain payroll; or make payments for mortgage interest, rent, utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures as specified under the Paycheck Protection Program Rules; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. (As explained above, not more than 40 percent of loan proceeds may be used for nonpayroll costs.)
- I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, covered utilities, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures, and not more than 40% of the forgiven amount may be for non-payroll costs. If required, the Applicant will provide to the Lender and/or SBA documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of eligible expenses for the covered period following this loan.
- The Applicant has not and will not receive another loan under the Paycheck Protection Program, section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (this does not include Paycheck Protection Program second draw loans, section 7(a)(37) of the Small Business Act (15 U.S.C. 636(a)(37)).
- The Applicant has not and will not receive a Shuttered Venue Operator grant from SBA.
- The President, the Vice President, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, does not directly or indirectly hold a controlling interest in the Applicant, with such terms having the meanings provided in section 322 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.
- The Applicant is not an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).
- I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

⁶⁴ A representative of the applicant can certify for the business as a whole if the representative is legally authorized to do so. The certifications have been revised to conform to the Economic Aid Act and the revised PPP Borrower Application Form (SBA Form 2483).

- I acknowledge that the Lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?⁶⁵

When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of First Draw PPP Loans with respect to this issue: Any borrower that, together with its affiliates, received First Draw PPP Loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the First Draw PPP Loan request in good faith.

SBA has determined that this safe harbor is appropriate because borrowers with First Draw PPP Loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

Importantly, borrowers with First Draw PPP Loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding First Draw PPP Loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the First Draw PPP Loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee.

For Second Draw PPP Loans, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Because Second Draw PPP Loan borrowers must demonstrate that they have had a 25% reduction in gross revenues, all Second Draw PPP Loan borrowers will be deemed to have made the required certification concerning the necessity of the loan in good faith. The loan amounts received by borrowers for First Draw PPP Loans and Second Draw PPP Loans will not be aggregated.

⁶⁵ Revised March 3, 2021 to reflect the interim final rule for the Second Draw PPP Loan.

Limited safe harbor with respect to certification concerning need for PPP loan request.

The CARES Act requires each applicant applying for a PPP loan to certify in good faith “that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing obligations” of the applicant. SBA, in consultation with Treasury, issued additional guidance on May 13, 2020 concerning how SBA will review the required good-faith certification. The guidance included a safe harbor providing that any PPP borrower, together with its affiliates, that received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.

Can my PPP loan be forgiven in whole or in part?

Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. An eligible borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes and employee and compensation levels are maintained or, if not, an applicable safe harbor or exemption applies. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs (including employer contributions for group health, life, disability, vision, and dental insurance), payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, utility payments for service that began before February 15, 2020, covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures over the loan forgiveness covered period.⁶⁶

Payroll costs that are qualified wages taken into account in determining the Employer Retention Credit are not eligible for loan forgiveness. The “loan forgiveness covered period” is the period beginning on the date the lender disburses the PPP loan and ending on any date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement and (ii) ending on the date that is 24 weeks after the date of disbursement.

To receive full loan forgiveness, a borrower must use at least 60 percent of the PPP loan for payroll costs, and not more than 40 percent of the loan forgiveness amount may be attributable to nonpayroll costs. For example, if a borrower uses 59 percent of its PPP loan for payroll costs, it will not receive the full amount of loan forgiveness it might otherwise be eligible to receive. Instead, the borrower will receive partial loan forgiveness, based on the requirement that 60 percent of the forgiveness amount must be attributable to payroll costs. For example, if a borrower receives a \$100,000 PPP loan, and during the covered period the borrower spends \$54,000 (or 54 percent) of its loan on payroll costs, then because the borrower used less than 60 percent of its loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is \$90,000 (with \$54,000 in payroll costs constituting 60 percent of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40 percent of the forgiveness amount). Because the Economic Aid Act changed the loan forgiveness covered period from either an 8- or 24-week period to a covered period between 8 and 24 weeks at the election of the borrower, SBA is eliminating the “alternative covered period” as defined in the interim final rule published at 85 Fed. Reg. 33004, 33006 (June 1, 2020), as amended.

⁶⁶ Covered operations expenditures, covered property damage costs, covered supplier costs, and covered worker protection expenditures were added as eligible expenses in section 304 of the Economic Aid Act. Except for loans made pursuant to section 7(a)(36) of the Small Business Act for which SBA has remitted a loan forgiveness payment to the lender before December 27, 2020, these eligible expenses apply to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan.

Additionally, an eligible borrower that received a loan of \$150,000 or less shall not, at the time of its application for loan forgiveness, be required to submit any application or documentation in addition to the certification and information required by paragraph 7A(l)(1)(A) of the Small Business Act. Such borrowers must retain records relevant to the form that prove compliance with the PPP requirements — with respect to employment records, for the 4-year period following submission of the loan forgiveness application, and with respect to other records, for the 3-year period following submission of the loan forgiveness application. All other borrowers must follow the existing requirements for loan forgiveness applications and records retention. SBA may review and audit PPP loans of \$150,000 or less and access any records the borrower is required to retain. All borrowers with loans of any size must provide documentation independently to a lender to satisfy relevant Federal, State, local or other statutory or regulatory requirements or in connection with an SBA loan review.

The Economic Aid Act repealed the CARES Act provision requiring SBA to deduct EIDL Advance Amounts received by borrowers from the forgiveness payment amounts remitted by SBA to the lender. The EIDL Advance Amount received by the borrower will not reduce the amount of forgiveness to which the borrower is entitled and will not be deducted from the forgiveness payment amount that SBA remits to the lender. Any EIDL Advance Amounts previously deducted from a borrower's forgiveness amount will be remitted to the lender, together with interest to the remittance date.

The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over the applicable forgiveness covered period. When does the applicable forgiveness covered period begin?⁶⁷

The CARES Act provided for an eight-week forgiveness covered period that starts on the date the lender makes a disbursement of the PPP loan to the borrower. The lender must disburse the loan no later than 10 calendar days from the date of loan approval.

The Paycheck Protection Program Flexibility Act of 2020, which became law on June 5, 2020, extended the covered period for loan forgiveness from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement, providing substantially greater flexibility for borrowers to qualify for loan forgiveness. The 24-week period applies to all borrowers that received forgiveness prior to December 27, 2020, but borrowers that received an SBA loan number before June 5, 2020, have the option to use an eight-week period.

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), enacted on December 27, 2020, changed the definition of "loan forgiveness covered period" to the period beginning on the date the lender disburses the PPP loan and ending on any date selected by the borrower that occurs during the period (i) beginning on the date that is 8 weeks after the date of disbursement and (ii) ending on the date that is 24 weeks after the date of disbursement.

⁶⁷ Revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP.

Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act (codified as section 7A of the Small Business Act) and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?⁶⁸

No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act (codified as section 7A(d)(6) of the Small Business Act) to prescribe regulations granting de minimis exemptions from the CARES Act's limits on loan forgiveness, SBA and Treasury issued an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule specifies that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, independent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan forgiveness.

For loans made prior to December 27, 2020, what additional documentation must a borrower submit when the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any of the preceding, directly or indirectly holds a controlling interest in the borrower?

For PPP loans made before December 27, 2020, if the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of such person as determined under applicable common law, directly or indirectly holds a controlling interest in the borrower, the principal executive officer, or individual performing a similar function, of the borrower must disclose that information to SBA. Such disclosure must be made not later than January 26, 2021, if the borrower submitted an application for forgiveness before December 27, 2020, or not later than 30 days after submitting an application for forgiveness.

C. What Do Lenders Need to Know and Do?

Who is eligible to make PPP loans?

- a. All SBA 7(a) lenders are automatically approved to make PPP loans on a delegated basis.
- b. The Act provides that the authority to make PPP loans can be extended to additional lenders determined by SBA and Treasury to have the necessary qualifications to process, close, disburse, and service loans made with the SBA guarantee. Since SBA is authorized to make PPP loans (and loans under section 7(a)(37) of the Small Business Act) up to \$806.45 billion by March 31, 2021, SBA and Treasury have jointly determined that authorizing additional lenders is necessary to achieve the purpose of allowing as many eligible borrowers as possible to receive loans by the March 31, 2021 deadline.

⁶⁸ Revised March 3, 2021 to reflect the consolidated interim final rule providing updates to the PPP, the interim final rule on Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness and loan review procedures.

c. The following types of lenders have been determined to meet the criteria and are eligible to make PPP loans unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action with their primary Federal regulator that addresses unsafe or unsound lending practices:

- Any federally insured depository institution or any federally insured credit union;
- Any Farm Credit System institution⁶⁹ (other than the Federal Agricultural Mortgage Corporation) as defined in 12 U.S.C. 2002(a) that applies the requirements under the Bank Secrecy Act and its implementing regulations (collectively, BSA) as a federally regulated financial institution, or functionally equivalent requirements that are not altered by the rule; and
- Any depository or non-depository financing provider that originates, maintains, and services business loans or other commercial financial receivables and participation interests; has a formalized compliance program; applies the requirements under the BSA as a federally regulated financial institution, or the BSA requirements of an equivalent federally regulated financial institution; has been operating since at least February 15, 2019, and has originated, maintained, or serviced more than \$50 million in business loans or other commercial financial receivables during a consecutive 12 month period in the past 36 months, or is a service provider to any insured depository institution that has a contract to support such institution's lending activities in accordance with 12 U.S.C. 1867(c) and is in good standing with the appropriate Federal banking agency.

d. Qualified institutions described in the first two bullets immediate above will be automatically qualified under delegated authority by the SBA upon transmission of CARES Act Section 1102 Lender Agreement (SBA Form 3506) unless they currently are designated in Troubled Condition by their primary Federal regulator or are subject to a formal enforcement action by their primary Federal regulator that addresses unsafe or unsound lending practices.

e. A non-bank lender may be approved to make PPP loans if it has originated, maintained, or serviced more than \$10 million in business loans or other commercial financial receivables during a 12-month period in the past 36 months, if the non-bank lender is (1) a community development financial institution (other than a federally insured bank or federally insured credit union) or (2) a majority minority-, women-, or veteran/military-owned lender.⁷⁰

I am a non-bank lender that meets all applicable criteria of the PPP Interim Final Rules. Will I be automatically enrolled as a PPP lender? What criteria will SBA and the Treasury Department use to assess whether to approve my application to participate as a PPP lender?⁷¹

SBA encourage lenders that are not currently 7(a) lenders to apply in order to increase the scope of PPP lending options and the speed with which PPP loans can be disbursed to help small businesses across

⁶⁹ Section 314 of the Economic Aid Act contains the following information related to Farm Credit System Institutions: "(1) APPLICABLE RULES.—Solely with respect to loans under paragraphs (36) and (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), Farm Credit Administration regulations and guidance issued as of July 14, 2020, and compliance with such regulations and guidance, shall be deemed functionally equivalent to requirements referenced in section 3(a)(iii)(II) of the interim final rule of the Administration entitled 'Business Loan Program Temporary Changes; Paycheck Protection Program' (85 Fed. Reg. 20811 (April 15, 2020)) or any similar requirement referenced in that interim final rule in implementing such paragraph (37)."

⁷⁰ Lenders described in this bullet item should follow the special instructions in footnote 1 of the 1102 Lender Agreement – Non-Bank and Non-Insured Depository Institution Lenders (SBA Form 3507).

⁷¹ Revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP.

America. We recognize that financial technology solutions can promote efficiency and financial inclusion in implementing the PPP. Applicants should submit SBA Form 3507 and the relevant attachments to NFRApplicationForPPP@sba.gov. Submission of the SBA Form 3507 does not result in automatic enrollment in the PPP. SBA and the Treasury Department will evaluate each application from a non-bank or non-insured depository institution lender and determine whether the applicant has the necessary qualifications to process, close, disburse, and service PPP loans made with SBA's guarantee. SBA may request additional information from the applicant before making a determination.

Do lenders have to register in SAM.gov to make PPP loans?⁷²

Yes. Given the exigent circumstances in which small businesses and lenders currently find themselves due to the COVID-19 pandemic, PPP lenders will have thirty (30) days from the date of the first PPP loan disbursement made by them after December 27, 2020 to complete SAM registration and provide SBA with the lender's unique entity identifier.

What do lenders have to do in terms of loan underwriting?

Each lender shall:

- Confirm receipt of borrower certifications contained in Paycheck Protection Program Borrower Application Form (SBA Form 2483) issued by SBA or lender's equivalent form;
- Confirm receipt of information demonstrating that a borrower was either an eligible self-employed individual, independent contractor, or sole proprietorship with no employees or had employees for whom the borrower paid salaries and payroll taxes on or around February 15, 2020;
- Confirm the dollar amount of average monthly payroll costs for 2019 or 2020 by reviewing the payroll documentation submitted with the borrower's application;⁷³and
- Follow applicable BSA requirements:
 - i. Federally insured depository institutions and federally insured credit unions should continue to follow their existing BSA protocols when making PPP loans to either new or existing customers who are eligible borrowers under the PPP. PPP loans for existing customers will not require re-verification under applicable BSA requirements, unless otherwise indicated by the institution's risk-based approach to BSA compliance.
 - ii. Entities that are not presently subject to the requirements of the BSA, should, prior to engaging in PPP lending activities, including making PPP loans to either new or existing customers who are eligible borrowers under the PPP, establish an anti-money laundering (AML) compliance program equivalent to that of a comparable federally regulated institution. Depending upon the comparable federally regulated institution, such a program may include a customer identification program (CIP), which includes identifying and verifying their PPP borrowers' identities (including e.g., date of birth, address, and taxpayer identification number), and, if that PPP borrower is a company, following any applicable beneficial ownership information collection requirements. Alternatively, if available, entities may rely on the CIP of a federally insured depository institution or federally insured credit union with an established CIP as part of its AML program. In either instance, entities should also understand the nature and purpose of their PPP customer relationships to develop

⁷² This subsection adds a new requirement that all PPP lenders must register in SAM.gov

⁷³ See PPP FAQ 1 (April 3, 2020) for further information on this step.

customer risk profiles. Such entities will also generally have to identify and report certain suspicious activity to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN). If such entities have questions with regard to meeting these requirements, they should contact the FinCEN Regulatory Support Section at FRC@fincen.gov. In addition, FinCEN has created a COVID-19-specific contact channel, via a specific drop-down category, for entities to communicate to FinCEN COVID-19-related concerns while adhering to their BSA obligations. Entities that wish to communicate such COVID-19-related concerns to FinCEN should go to www.FinCEN.gov, click on “Need Assistance,” and select “COVID19” in the subject drop-down list.

Each lender’s underwriting obligation under the PPP is limited to the items above and reviewing the “Paycheck Protection Borrower Application Form.” Borrowers must submit such documentation as is necessary to establish eligibility such as payroll records, payroll tax filings, or Form 1099-MISC, Schedule C or F, income and expenses from a sole proprietorship, or bank records. For borrowers that do not have any such documentation, the borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

A lender may rely on any certification or documentation submitted by an applicant for a PPP loan or an eligible recipient or eligible entity that (A) is submitted pursuant to all applicable statutory requirements, regulations, and guidance related to a PPP loan, including under paragraph 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)); and (B) attests that the applicant, eligible recipient, or eligible entity, as applicable, has accurately provided the certification or documentation to the lender in accordance with the statutory requirements, regulations, and guidance related to PPP loans. With respect to a lender that relies on such a certification or documentation related to a PPP loan, an enforcement action may not be taken against the lender, and the lender shall not be subject to any penalties relating to loan origination or forgiveness of the PPP loan, if—(A) the lender acts in good faith relating to loan origination or forgiveness of the PPP loan based on that reliance; and (B) all other relevant Federal, State, local, and other statutory and regulatory requirements applicable to the lender are satisfied with respect to the PPP loan.⁷⁴

Are PPP loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?

If the PPP loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information.

Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender’s risk-based approach to BSA compliance.

⁷⁴ This paragraph was added to conform to section 305 of the Economic Aid Act. This shall be effective as if included in the CARES Act and shall apply to any loan made before, on, or after December 27, 2020, including forgiveness of such a loan.

Does the information lenders are required to collect from PPP applicants regarding every owner who has a 20% or greater ownership stake in the applicant business (i.e., owner name, title, ownership %, TIN, and address) satisfy a lender’s obligation to collect beneficial ownership information (which has a 25% ownership threshold) under the Bank Secrecy Act?

For lenders with existing customers: With respect to collecting beneficial ownership information for owners holding a 20% or greater ownership interest, if the PPP loan is being made to an existing customer and the lender previously verified the necessary information, the lender does not need to re-verify the information. Furthermore, if federally insured depository institutions and federally insured credit unions eligible to participate in the PPP program have not yet collected such beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new PPP loans, unless otherwise indicated by the lender’s risk-based approach to Bank Secrecy Act (BSA) compliance.

For lenders with new customers: For new customers, the lender’s collection of the following information from all natural persons with a 20% or greater ownership stake in the applicant business will be deemed to satisfy applicable BSA requirements and FinCEN regulations governing the collection of beneficial ownership information: owner name, title, ownership %, TIN, address, and date of birth. If any ownership interest of 20% or greater in the applicant business belongs to a business or other legal entity, lenders will need to collect appropriate beneficial ownership information for that entity. If you have questions about requirements related to beneficial ownership, go to <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>. Decisions regarding further verification of beneficial ownership information collected from new customers should be made pursuant to the lender’s risk-based approach to BSA compliance.

Are FinCEN’s April 2020 Frequently Asked Questions regarding the Paycheck Protection Program (PPP) applicable to Second Draw PPP Loans?

Yes. The FinCEN April 2020 PPP Frequently Asked Questions (FAQs) apply to Second Draw PPP Loans. If you have general questions about requirements related to customer due diligence or beneficial ownership, please see <https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>.

For purposes of Bank Secrecy Act/Anti-Money Laundering compliance, can a PPP lender rely on the same information received from a borrower for the purposes of a First Draw PPP Loan for a Second Draw PPP Loan to that same borrower?

The information a lender obtained from a borrower in connection with a First Draw PPP Loan can be relied upon by that lender for a Second Draw PPP Loan application, if the borrower is an existing customer. Decisions regarding the updating of customer due diligence and the verification and updating of the beneficial ownership information collected from customers should be made consistent with the guidance for both existing customers and new customers set forth in the previous April 2020 FAQs and in this FAQ, and pursuant to the lender’s risk-based approach to Bank Secrecy Act compliance.

May lenders accept signatures from a single individual who is authorized to sign on behalf of the borrower?⁷⁵

Yes. However, the borrower should bear in mind that, as the Borrower Application Forms indicate, only an authorized representative of the applicant seeking a loan may sign on behalf of the applicant. An individual’s signature as an “Authorized Representative of Applicant” is a representation to the lender

⁷⁵ Revised March 3, 2021 to clarify applicability to non-profits.

and to the U.S. government that the signer is authorized to make the certifications, including with respect to the applicant and each owner of 20% or more of the applicant's equity, contained in the Borrower Application Form. Lenders may rely on that representation and accept a single individual's signature on that basis.

Paragraph 3.b.iii of the first PPP Interim Final Rule, subsection C.3.c. of the consolidated interim final rule implementing updates to PPP, and subsection (h)(2)(i)(C) of the interim final rule for Second Draw PPP Loans state that lenders must “[c]onfirm the dollar amount of average monthly payroll costs ... for the preceding calendar year by reviewing the payroll documentation submitted with the borrower’s application.” Does that require the lender to replicate each of the borrower’s calculations?

No. Providing an accurate calculation of payroll costs is the responsibility of the borrower, and the borrower attests to the accuracy of those calculations on the Borrower Application Form (SBA Form 2483 for First Draw PPP Loans and SBA Form 2483-SD for Second Draw PPP Loans). Lenders are expected to perform a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost. For example, minimal review of calculations based on a payroll report by a recognized third-party payroll processor would be reasonable. In addition, as the PPP Interim Final Rules indicate, lenders may rely on borrower representations, including with respect to amounts required to be excluded from payroll costs.

If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

Can lenders rely on borrower documentation for loan forgiveness?⁷⁶

Yes. The lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness and attests that it accurately verified the payments for eligible costs.

Are lenders required to make an independent determination regarding applicability of affiliation rules under 13 C.F.R. 121.301(f) to borrowers?

No. It is the responsibility of the borrower to determine which entities (if any) are its affiliates and determine the employee headcount of the borrower and its affiliates. Lenders are permitted to rely on borrowers' certifications.

Will SBA review individual PPP loan files?⁷⁷

Yes. In other FAQs, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Additional guidance implementing this procedure has been provided in subsequent FAQs and the consolidated interim final rule on loan forgiveness and loan review procedures.

⁷⁶ SBA intends to issue a consolidated interim final rule governing all aspects of loan forgiveness and the loan review process.

⁷⁷ Revised March 3, 2021 to reflect the consolidated interim final rule implementing updates to the PPP, the interim final rule for Second Draw PPP Loans, and the consolidated interim final rule on loan forgiveness and loan review procedures.

The outcome of SBA's review of loan files will not affect SBA's guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the first PPP Interim Final Rule, subsection C.3. of the consolidated interim final rule implementing updates to the PPP, or subsection (h)(2)(i) of the interim final rule for Second Draw PPP Loans, as applicable, and further explained in FAQs.

What fees will lenders be paid?

For PPP loans made on or after December 27, 2020, SBA will pay lenders fees, based on the balance of the financing outstanding at the time of disbursement of the loan, for processing PPP loans in the following amounts:

- For loans of not more than \$50,000, an amount equal to the lesser of fifty (50) percent or \$2,500;
- Five (5) percent for loans of more than \$50,000 and not more than \$350,000;
- Three (3) percent for loans of more than \$350,000 and less than \$2,000,000; and
- One (1) percent for loans of at least \$2,000,000.

SBA will pay the fee not later than 5 days after the reported disbursement of the PPP loan and, as required by the Economic Aid Act, may not require the fee to be repaid by the lender unless the lender is found guilty of an act of fraud in connection with the PPP loan.

Can PPP loans be sold into the secondary market?

Yes. A PPP loan may be sold onto the secondary market at any time after the loan is fully disbursed. A secondary market sale of a PPP loan does not require SBA approval. A PPP loan sold onto the secondary market is 100% SBA guaranteed. A PPP loan may be sold on the secondary market at a premium or a discount to par value.

Do the requirements for loan pledges under 13 CFR 120.434 apply to PPP loans pledged for borrowings from a Federal Reserve Bank (FRB) or advances by a Federal Home Loan Bank (FHLB)?

No. Pursuant to SBA regulations at 13 CFR 120.435(d) and (e), a pledge of 7(a) loans to a FRB or FHLB does not require SBA's prior written consent or notice to SBA. SBA, in consultation with Treasury, has determined that for purposes of loans made under the PPP, the additional requirements set forth in 120.434 shall also not apply. This would mean, for example, that SBA would not have to approve loan documents or require a multi-party agreement among SBA, the lender, and others.

Are lenders required to use a promissory note provided by SBA or may they use their own?

Lenders may use their own promissory note or an SBA form of promissory note.

The Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) extended the deferral period for borrower payments of principal, interest, and fees on all PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period). Previously, the deferral period could end after 6 months. Are lenders and borrowers required to modify promissory notes used for PPP loans to reflect the extended deferral period?

The extension of the deferral period under the Flexibility Act automatically applies to all PPP loans. Lenders are required to give immediate effect to the statutory extension and should notify borrowers of the change to the deferral period. SBA does not require a formal modification to the promissory note. A

modification of a promissory note to reflect the required statutory deferral period under the Flexibility Act will have no effect on the SBA's guarantee of a PPP loan.

Are lenders required to use a separate SBA Authorization document to issue PPP loans?⁷⁸

No. A lender does not need a separate SBA Authorization for SBA to guarantee a PPP loan. However, lenders must have executed SBA Form 2484 (the Lender Application Form—Paycheck Protection Program Loan Guaranty) or SBA Form 2484-SD (Lender's Application – Second Draw Loan Guaranty)⁷⁹ to issue PPP loans and receive a loan number for each originated PPP loan. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with the CARES Act, the Economic Aid Act, the PPP Interim Final Rules and guidance, and SBA Form 2484 or SBA Form 2484-SD.

Are lenders permitted to use their own online portals and an electronic form that they create to collect the same information and certifications as in the Borrower Application Forms, in order to complete implementation of their online portals?⁸⁰

Yes. Lenders may use their own online systems and a form they establish that asks for the same information (using the same language) as the Borrower Application Forms. Lenders are still required to send the data to SBA using SBA's interface.

Is a lender permitted to submit a PPP loan application to SBA through SBA's electronic loan processing system before the lender has fulfilled its responsibility to review the required borrower documentation and calculation of payroll costs, and for Second Draw PPP Loans, review the required borrower documentation regarding revenue reduction?⁸¹

No. Before a lender submits a PPP loan through SBA's electronic loan processing system, the lender must have collected the information and certifications contained in the Borrower Application Form (SBA Form 2483 or SBA Form 2483-SD) and the lender must have fulfilled its obligations set forth in paragraphs 3.b.(i)-(iii) of the first PPP Interim Final Rule, subsection C.3. of the consolidated interim final rule implementing updates to the PPP, or subsection (h)(2)(i) of the interim final rule for Second Draw PPP Loans, as applicable. Please refer to the Interim Final Rules and the FAQs for more information on the lender's responsibility regarding confirmation of payroll costs, and the interim final rule for Second Draw PPP Loans for the lender's responsibility regarding confirmation of revenue reduction.

Lenders who made PPP loans prior to April 14, 2020 and did not understand that these steps are required before submission into E-Tran did not need to withdraw applications submitted to E-Tran before April 14, 2020, but must have fulfilled lender responsibilities with respect to those applications as soon as practicable and no later than loan closing.

⁷⁸ Revised March 3, 2021 to conform to the interim final rule for Second Draw PPP Loans.

⁷⁹ This requirement is satisfied by a lender when the lender completes the process of submitting a loan through SBA's electronic loan processing system; no transmission or retention of a physical copy of SBA Form 2484 or SBA Form 2484-SD is required.

⁸⁰ Revised March 3, 2021 to include multiple Borrower Application Forms.

⁸¹ Revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP and the interim final rule for Second Draw PPP Loans.

By when must a lender electronically submit an SBA Form 1502 indicating that PPP loan funds have been disbursed?⁸²

SBA has made available a specific SBA Form 1502 reporting process through which PPP lenders report on PPP loans and collect the processing fee on fully disbursed loans to which they are entitled. Lenders must electronically upload SBA Form 1502 information within 20 calendar days after a PPP loan is approved.

How do lenders report disbursements on PPP loans that are approved for loan increases due to the Economic Aid Act?

Lenders must submit the SBA Form 1502 information within 20 calendar days after a PPP loan increase is approved following the SBA Form 1502 reporting process.

D. What Do Both Borrowers and Lenders Need to Know and Do?

What are the loan terms and conditions?

Loans will be guaranteed under the PPP under the same terms, conditions and processes as other 7(a) loans, with certain changes including but not limited to:

- The guarantee percentage is 100 percent.
- No collateral will be required.
- No personal guarantees will be required.
- The interest rate will be 100 basis points or one percent, calculated on a non-compounding, non-adjustable basis.⁸³
- All loans will be processed by all lenders under delegated authority and lenders will be permitted to rely on certifications of the borrower in order to determine eligibility of the borrower and the use of loan proceeds.

Can lenders use scanned copies of documents or E-signatures or E-consents permitted by the E-sign Act?⁸⁴

Yes. All PPP lenders may accept scanned copies of signed loan applications, loan forgiveness applications, and documents containing the information and certifications required by SBA Forms 2483, 2483-SD, 3508, 3508EZ, 3508S, or 3508D, and the promissory note used for the PPP loan. Additionally, lenders may also accept any form of E-consent or E-signature that complies with the requirements of the Electronic Signatures in Global and National Commerce Act (P.L. 106-229).

If electronic signatures are not feasible, when obtaining a wet ink signature without in-person contact, lenders should take appropriate steps to ensure the proper party has executed the document. This guidance does not supersede signature requirements imposed by other applicable law, including by the lender's primary federal regulator.

⁸² Revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

⁸³ The revision applies to PPP loans made on or after December 27, 2020, but may apply with respect to a PPP loan made before that date upon the mutual agreement of the lender and the borrower.

⁸⁴ Revised March 3, 2021 to reflect the additional SBA Forms for Second Draw PPP Loan and loan forgiveness.

Do lenders have to apply the “credit elsewhere test”?

No. When evaluating an applicant’s eligibility lenders will not be required to apply the “credit elsewhere test” (as set forth in section 7(a)(1)(A) of the Small Business Act (15 U.S.C. 636) and SBA regulations at 13 CFR 120.101).

Are there any fee waivers?

- There will be no up-front guarantee fee payable to SBA by the borrower;
- There will be no lender’s annual service fee (“on-going guaranty fee”) payable to SBA;
- There will be no subsidy recoupment fee; and
- There will be no fee payable to SBA for any guarantee sold into the secondary market.

Who pays the fee to an agent who provides assistance in connection with a PPP loan?⁸⁵

Agent fees may not be paid out of the proceeds of a PPP loan. If a borrower has knowingly retained an agent, such fees will be paid by the borrower. A lender is only responsible for paying fees to an agent for services for which the lender directly contracts with the agent. The total amount that an agent may collect from the lender for assistance in preparing an application for a PPP loan (including referral to the lender) may not exceed:

- One (1) percent for loans of not more than \$350,000;
- 0.50 percent for loans of more than \$350,000 and less than \$2 million; and
- 0.25 percent for loans of at least \$2 million.

The Act authorizes SBA to establish limits on agent fees. SBA, in consultation with Treasury, determined that the agent fee limits set forth above are reasonable based upon the application requirements and the fees that lenders receive for making PPP loans.

What effect does the payment or nonpayment of fees of an agent or other third party have on SBA’s guarantee of a PPP loan or SBA’s payment of fees to lenders?⁸⁶

The payment or nonpayment of fees of an agent or other third party is not material to SBA’s guarantee of a PPP loan or to SBA’s payment of fees to lenders. Additional information about such fees can be found in subsection D.4 of the consolidated interim final rule implementing updates to the Paycheck Protection Program.

Can a borrower take multiple draws from a PPP loan and thereby delay the start of the covered period?

No. The lender must make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval; for the purposes of this rule, a loan is considered approved when the loan is assigned a loan number by SBA.⁸⁷

Notwithstanding this limitation, lenders are not responsible for delays in disbursement attributable to a borrower’s failure to timely provide required loan documentation, including a signed promissory note. Loans for which funds have not been disbursed because a borrower has not submitted required loan

⁸⁵ This revision is effective as if included in the CARES Act and applies to PPP loans made before, on, or after December 27, 2020, including forgiveness of such a loan.

⁸⁶ Revised March 3, 2021 to conform to the consolidated interim final rule implementing updates to the PPP.

⁸⁷ If the tenth calendar day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next business day.

documentation within 20 calendar days of loan approval shall be cancelled by the lender. When disbursing loans, lenders must send any amount of loan proceeds designated for the refinance of an EIDL loan directly to SBA and not to the borrower.

If a partnership received a PPP loan that did not include any compensation for its partners, can the loan amount be increased to include partner compensation?

Yes. If a partnership received a PPP loan that only included amounts necessary for payroll costs of the partnership's employees and other eligible operating expenses, but did not include any amount for partner compensation, the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount to include appropriate partner compensation, even if the loan has been fully disbursed and even if the lender's first SBA Form 1502 report to SBA on the PPP loan has already been submitted. In no event can the increased loan amount exceed the maximum loan amount allowed under the PPP Program, which is \$10 million for an individual borrower or \$20 million for a corporate group. Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase. Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds.

As described earlier in this FAQ document, partnerships, rather than individual partners, are eligible for a PPP loan. Also as described earlier in this FAQ document, self-employment income of general active partners could be reported as a payroll cost, up to \$100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred, on a PPP loan application filed by or on behalf of the partnership. For guidance describing how to calculate partnership PPP loan amounts and defining the self-employment income of partners, see How to Calculate Maximum Loan Amounts, Question 4 at: <https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf>

If a seasonal employer received a PPP loan before December 27, 2020, can the loan amount be increased based on a revised calculation of the maximum loan amount?

Yes. If a seasonal employer received a PPP loan before December 27, 2020, and such employer would be eligible for a higher maximum loan amount under section 336 of the Economic Aid Act, as described earlier in this FAQ, the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount, even if the loan has been fully disbursed and even if the lender's first SBA Form 1502 report to SBA on the PPP loan has already been submitted. In no event can the increased loan amount exceed the maximum PPP loan amount (\$10 million for an individual borrower or \$20 million for a corporate group). Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase. Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds.

Which other PPP borrowers can reapply or request an increase in their PPP loan amount?

The following borrowers can reapply or request an increase in their PPP loan amount:

- If a borrower returned all of a PPP loan, the borrower may reapply for a PPP loan in an amount the borrower is eligible for under current PPP rules.
- If a borrower returned part of a PPP loan, the borrower may reapply for an amount equal to the difference between the amount retained and the amount previously approved.

- If a borrower did not accept the full amount of a PPP loan for which it was approved, the borrower may request an increase in the amount of the PPP loan up to the amount previously approved.

Any request for an increase must be submitted electronically in E-Tran on or before March 31, 2021, and is subject to the availability of funds. SBA will issue additional guidance on the process to reapply or request a loan increase under this D subsection.

If a borrower's PPP loan has already been fully disbursed, can the lender make an additional disbursement for the increased loan proceeds?

Yes. Notwithstanding the requirement set forth in paragraph 1.a. of the interim final rule on disbursements posted on April 28, 2020, (i.e., that lenders make a one-time, full disbursement of the PPP loan within ten calendar days of loan approval), if a PPP loan is increased under subsections D.6., D.7., or D.8., of the interim final rule (i.e., the last three FAQs directly above) the lender may make a single additional disbursement of the increased loan proceeds.

Are recipients of PPP loans entitled to exemptions on the grounds provided in Federal nondiscrimination laws for sex-specific admissions practices, sex-specific domestic violence shelters, coreligionist housing, or Indian tribal preferences in connection with adoption or foster care practices?

Yes. With respect to any loan or loan forgiveness under the PPP, the nondiscrimination provisions in the applicable SBA regulations incorporate the limitations and exemptions provided in corresponding Federal statutory or regulatory nondiscrimination provisions for sex-specific admissions practices at preschools, non-vocational elementary or secondary schools, and private undergraduate higher education institutions under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), for sex-specific emergency shelters and coreligionist housing under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.), and for adoption or foster care practices giving child placement preferences to Indian tribes under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

In addition, for purposes of the PPP, SBA regulations do not bar a religious nonprofit entity from making decisions with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such nonprofit of its activities.

I filed or approved a loan application based on the version of the PPP Interim Final Rules published at the time of the application. Do I need to take any action based on the updated guidance in FAQs?⁸⁸

No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in FAQs.

Why are some PPP borrowers receiving a Loan Necessity Questionnaire (SBA Form 3509 or 3510)?⁸⁹

As previously announced, SBA is reviewing all First Draw PPP Loans of \$2 million or more, and other loans as appropriate, for eligibility, fraud or abuse, and compliance with loan forgiveness requirements. As part of this process, SBA is providing a Loan Necessity Questionnaire to lenders for them to provide to PPP borrowers that, together with their affiliates, received First Draw PPP Loans of \$2 million or

⁸⁸ Revised March 3, 2021 to reflect subsequent rulemaking.

⁸⁹ Revised March 3, 2021 to reflect additional guidance.

more. Upon request from their lender, borrowers should return the completed questionnaire to their lender within 10 business days of receipt.

The information that borrowers provide on the questionnaire will help SBA assess those borrowers' certification in their First Draw PPP Loan application that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant," as required by the CARES Act. A request to complete the Loan Necessity Questionnaire does not mean that SBA is challenging a borrower's certification that is required by the CARES Act. SBA's assessment of a borrower's certification will be based on the totality of the borrower's circumstances through a multi-factor analysis. As described in FAQs, SBA will assess whether the borrower had adequate basis for making the required good-faith certification, based on its individual circumstances in light of the language of the certification and SBA guidance. This certification is required to have been made in good faith at the time of the First Draw PPP Loan application, even if subsequent developments resulted in the loan no longer being necessary. In its review, SBA may take into account the borrower's circumstances and actions both before and after the borrower's certification to the extent that doing so will assist SBA in determining whether the borrower made the statutorily required certification in good faith at the time of its First Draw PPP Loan application.

After a borrower submits its completed questionnaire, SBA may request additional information, if necessary, to complete its review. When additional information is requested, borrowers will have an opportunity to provide a narrative response to SBA explaining the circumstances that provided the basis for their good-faith loan necessity certification. SBA will make a final determination that a borrower lacked an adequate basis for its loan necessity certification after reviewing any additional information that a borrower chooses to submit. This targeted, multi-step approach will ensure the integrity of the evaluation process and expeditious processing, as well as properly allocate SBA's finite resources to those First Draw PPP Loans that require additional review. Also see FAQs for guidance on the loan necessity certification on Second Draw PPP Loans found earlier in this document.

E. First Draw PPP Loan Increases After Enactment of Economic Aid Act

Do the changes made by the Economic Aid Act now allow for borrowers to request an increase in amount to their PPP loan?

Yes, in limited circumstances. Under previous PPP rules, a First Draw PPP Loan could not be increased unless the loan was made to a partnership or seasonal employer and the lender approved the increase before the lender submitted the initial SBA Form 1502 (1502) report for the loan. Section 312 of the Economic Aid Act provides for additional narrow circumstances under which certain eligible borrowers that received a First Draw PPP Loan may reapply for a First Draw PPP Loan or request an increase in a First Draw PPP Loan that was approved on or before August 8, 2020. No other First Draw PPP Loan increases are allowed.

Who can increase a First Draw PPP Loan?

A First Draw PPP Loan increase can be made only by the Lender of Record, and only under certain circumstances.

Who is the "Lender of Record?"

The "Lender of Record" is the lender that is reflected on SBA's system as the current owner of the First Draw PPP Loan. If the First Draw PPP Loan was sold after loan origination, the Lender of Record is the lender that purchased the loan.

Who is the “Originating Lender” under the First Draw PPP Loan Increase rules?

The “Originating Lender” is the lender that processed the First Draw PPP Loan application and received the SBA loan number.

Can a borrower request a First Draw Loan Increase if borrower has received forgiveness from SBA?

No. If SBA has remitted a forgiveness payment to the lender on a First Draw PPP Loan, no loan increases or reapplications are allowed.

*Increase Rules Regarding Partnerships***When can a partnership seek a First Draw Loan Increase?**

If a partnership received a First Draw PPP Loan that only included amounts necessary for payroll costs of the partnership’s employees and other eligible operating expenses, but did not include any amount for partner compensation, and SBA has not remitted a forgiveness payment to the Lender on that loan, the Lender of Record may electronically submit a request through SBA’s E-Tran Servicing site (E-Tran) to increase the First Draw PPP Loan amount to include appropriate partner compensation, even if the loan has been fully disbursed and even if the Lender’s first 1502 report to SBA on the First Draw PPP Loan has already been submitted.

How much may a partnership seek an increase in loan amount for?

The amount of the increase may not exceed the maximum loan amount to which the borrower is entitled under PPP rules, and in no event can the increased loan amount exceed the maximum PPP loan amount (\$10 million for an individual borrower or \$20 million for a corporate group). Additionally, the borrower must provide the Lender of Record with all required documentation to support the calculation of the increase to include partner compensation, and the lender must comply with the loan amount underwriting requirements outlined elsewhere in this FAQ document.

How is a First Draw Loan PPP Increase to be submitted for a partnership?

Any request for an increase must be submitted electronically in E-Tran by the Lender of Record on or before March 31, 2021, and is subject to the availability of funds. SBA will pay an additional processing fee to the Originating Lender on the amount of the increase.

*Increase Rules Regarding Seasonal Employers***When can a seasonal employer seek a First Draw Loan Increase?**

Section 336 of the Economic Aid Act revised the method by which a seasonal employer may determine its maximum loan amount for purposes of the PPP to allow the seasonal employer to use the average total monthly payments for payroll for any 12-week period selected by the seasonal employer beginning February 15, 2019, and ending February 15, 2020. If a seasonal employer received a First Draw PPP Loan and SBA has not remitted a forgiveness payment to the Lender on that loan, the seasonal employer would be eligible for an increase if application of the methodology in Section 336 of the Economic Aid Act results in the calculation of a higher loan amount.

How is a First Draw Loan PPP Increase to be submitted for a seasonal employer?

If a seasonal employer is permitted a First Draw Loan Increase, the Lender of Record may electronically submit a request through E-Tran to increase the seasonal employer’s First Draw PPP Loan amount, even if the loan has been fully disbursed and even if the Lender’s first 1502 report to SBA on the PPP loan has

already been submitted. Any request for an increase must be submitted electronically in E-Tran by the Lender of Record on or before March 31, 2021, and is subject to the availability of funds. SBA will pay an additional processing fee to the Originating Lender on the amount of the increase.

How much may a seasonal employer seek an increase in loan amount for?

The amount of the increase may not exceed the maximum loan amount to which the borrower is entitled under PPP rules, and in no event can the increased loan amount exceed the maximum PPP loan amount (\$10 million for an individual borrower or \$20 million for a corporate group). Additionally, the borrower must provide the Lender of Record with all required documentation to support the calculation of the increase due to the newly-selected 12 week period, and the lender must comply with the loan amount underwriting requirements outlined elsewhere in this FAQ document.

Increase Rules Regarding Farmers and Ranchers

When can a farmer or rancher seek a First Draw Loan Increase?

Section 313 of the Economic Aid Act changed the calculation of the maximum loan amount for certain farmers and ranchers. The calculation is described earlier in this FAQ document.

How is a First Draw Loan PPP Increase to be submitted for farmers and ranchers?

If an eligible farmer or rancher received a First Draw PPP Loan and SBA has not remitted a forgiveness payment to the lender on that loan, and such farmer or rancher would be eligible for a higher maximum loan amount based on the formula described earlier in this FAQ document, the Lender of Record may electronically submit a request through E-Tran to increase the First Draw PPP Loan amount, even if the loan has been fully disbursed and even if the lender's first 1502 report to SBA on the PPP loan has already been submitted. Any request for an increase must be submitted electronically in E-Tran by the Lender of Record on or before March 31, 2021, and is subject to the availability of funds. SBA will pay an additional processing fee to the Originating Lender on the amount of the increase.

How much may a farmer or rancher seek an increase in loan amount for?

The amount of the increase may not exceed the maximum loan amount to which the borrower is entitled under PPP rules, and in no event can the increased loan amount exceed the maximum PPP loan amount (\$10 million for an individual borrower). Additionally, the borrower must provide the Lender of Record with all required documentation to support the calculation of the increase under the new methodology, and the Lender must comply with the loan amount underwriting requirements described elsewhere in this FAQ document.

Other PPP Borrowers Eligible for a PPP Loan Increase (or Reapplication):

1. Eligible Borrowers that fully repaid a First Draw PPP Loan before December 27, 2020:

If an eligible borrower received a First Draw PPP Loan, the lender reported to SBA before December 27, 2020 that the borrower fully repaid the loan, and SBA has not remitted a forgiveness payment to the Lender on that loan, the borrower may reapply for a new First Draw PPP Loan in an amount for which the borrower is eligible under current PPP rules.⁹⁰ All reapplications are subject to the availability of funds. Lenders may approve such a reapplication if the borrower is eligible for a First Draw Loan under

⁹⁰ For clarification, any First Draw PPP Loan reported as "paid in full" by a Lender due to SBA's remittance of a forgiveness payment in any amount to the Lender is not eligible for a reapplication. However, the borrower may be eligible for a Second Draw PPP Loan.

current PPP rules. The reapplication procedure depends on whether the lender reported the loan to SBA as “cancelled” or “paid in full” as a result of the borrower’s repayment before December 27, 2020. The reapplication procedure applies only to those loans reported as “cancelled” or “paid in full” by the lender because the borrower returned the full amount of the original loan amount prior to December 27, 2020.

If lender reported the First Draw PPP Loan as “cancelled” to SBA after the borrower’s full repayment before December 27, 2020, no further action must be taken by the lender in order for the borrower to be able to reapply for a new First Draw PPP Loan. Because the First Draw PPP Loan was reported as “cancelled,” such borrowers may in good faith make the certification on the PPP Borrower Application Form Revised January 8, 2021 (SBA Form 2483) that “the Applicant has not and will not receive another loan under the Paycheck Protection Program, Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).” In this circumstance, the borrower may reapply for a new First Draw PPP Loan with any participating PPP Lender.

However, if lender reported the First Draw PPP Loan as “paid in full” following the return of all funds by the borrower before December 27, 2020, SBA’s loan processing system will not allow a reapplication to be processed until the Lender of Record changes the reported status of the First Draw PPP Loan in E-Tran from “paid in full” to “cancelled” by following the instructions below:

- a. On the 1502 information page in E-Tran: Change the loan status to “Disbursed Current,” enter the original total loan amount in the outstanding balance field, and then select save at the bottom of the screen.
- b. Pull up the loan in E-Tran again, select the 1502 information page, change the status to “Active Undisbursed,” enter zero in the outstanding balance field, enter the full loan amount in the total amount undisbursed field, and then select save at the bottom of the screen.
- c. After changing the status to “Active Undisbursed” (step b), pull up the loan in E-Tran again, select the cancel icon at the top of the screen, select the circle for “yes” to cancel, and then select save. The loan status should change to “Fully Cancelled.”

The Lender of Record must not change a loan status from “paid in full” to “cancelled” unless the borrower returned the full amount of the original loan amount prior to December 27, 2020. After the Lender of Record has successfully completed these steps, the Lender of Record (or any participating PPP Lender) can submit a reapplication for a new First Draw PPP Loan. Because the First Draw PPP Loan was successfully reported as “cancelled,” such borrowers may in good faith make the certification on the PPP Borrower Application Form Revised January 8, 2021 (SBA Form 2483) that “the Applicant has not and will not receive another loan under the Paycheck Protection Program, Section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)).”

On all reapplications for new First Draw PPP Loans, the Lender must comply with the loan amount underwriting requirements as described elsewhere in this FAQ document. Any disbursement on a reapplication must be reported by the Lender on a 1502 report within 20 days of approval of the reapplication. SBA will pay a processing fee to the Originating Lender on any new First Draw PPP Loan, calculated in accordance with information described earlier in this FAQ document.

2. Borrowers that returned part of a First Draw PPP Loan before December 27, 2020:

If a borrower returned (or repaid) part of a First Draw PPP Loan, the lender reported to SBA before December 27, 2020 that the borrower repaid the loan in part, and SBA has not remitted a forgiveness payment to the lender on that loan, the Lender of Record may approve a borrower's request for a loan increase and re-disburse funds equal to the difference between the amount retained by the borrower and the amount previously approved. After re-disbursing the loan increase amount, the Lender must ensure that the loan amount and status are correctly reported on the next 1502 report submitted by the lender.

For example, if a First Draw PPP Loan was originally approved in SBA's loan processing system for \$100,000, the lender disbursed \$100,000 to the borrower, the lender reported the fully disbursed amount to SBA on the 1502 report, and the lender reported before December 27, 2020 that the borrower repaid \$25,000 to the lender because the borrower could not spend the funds during the covered period (retaining \$75,000), the lender can make an additional disbursement of \$25,000 on the loan to increase the outstanding balance of the loan back to the approved amount of \$100,000, provided SBA has not remitted a forgiveness payment to the lender on that loan. Because the lender previously reported the \$25,000 borrower repayment on the loan to SBA on the 1502 report and E-Tran currently reflects an outstanding balance of \$75,000 on the loan, the lender must report a corrected balance of \$100,000 on the loan on the first 1502 report submitted by the lender after the \$25,000 re-disbursement. If SBA previously paid the Originating Lender a processing fee based on the \$100,000 fully disbursed amount, SBA will not pay the Originating Lender any additional processing fee as a result of the re-disbursement.

Any re-disbursement of the increased amount must be reported by the lender on a 1502 report on or before March 31, 2021, and is subject to the availability of funds.

3. Borrowers that did not accept the full amount of a First Draw PPP Loan for which they were approved:

If a borrower did not accept before December 27, 2020 the full amount of a First Draw PPP Loan for which it was approved in SBA's E-Tran Origination site and SBA has not remitted a forgiveness payment to the lender on that loan, the borrower may request an increase and the Lender of Record may approve and disburse a loan increase in the amount of the First Draw PPP Loan up to the amount previously approved. The process for obtaining the loan increase in this situation differs depending on how the Lender previously reported to SBA before December 27, 2020 that the borrower did not accept the full amount of the First Draw PPP Loan.

If the lender reported the loan as partially disbursed for the lower amount and did not process a decrease of the loan in E-Tran, the lender may make a second disbursement on the loan to the borrower up to the full approved amount in E-Tran, provided that SBA has not remitted a forgiveness payment to the lender on that loan.

For example, E-Tran currently reflects an approved loan amount of \$100,000. The lender reported to SBA on the 1502 report that it disbursed \$50,000 on the loan. If the lender never decreased the approved loan amount in E-Tran to \$50,000, the lender can disburse an additional \$50,000 to the borrower and report that disbursement on the next 1502 report filed for the loan. The disbursement of the increased amount must be reported by the lender on a 1502 report on or before March 31, 2021, and is subject to the availability of funds. In this example, SBA will pay the full processing fee to the Originating Lender because it has not been previously paid.

If the lender processed a decrease of the approved loan amount in E-Tran, the lender may process an increase on the loan.

For example, a borrower was originally approved for \$100,000, but the borrower only accepted \$50,000 (never receiving the full approval amount), the lender decreased the approved loan amount in E-Tran to \$50,000, and reported disbursement of \$50,000 on the 1502 report. In this scenario, the lender may process a loan increase of \$50,000 on the loan, provided that SBA has not remitted a forgiveness payment to the lender on that loan. The process for obtaining a loan increase using E-Tran is set forth in the “Section 1102 of the CARES Act – Paycheck Protection Program (PPP)” section of the FTA’s: <https://colsonservices.bnymellon.com/programs/downloads.jsp> After the lender successfully processes a loan increase in E-Tran, the lender must disburse the increased amount to the borrower within 10 calendar days and report the increase on the next 1502 report. In this example, SBA will pay the Originating Lender a processing fee on the increased amount.

When must a request for increase be submitted electronically by the Lender in E-Tran?

Any request for an increase must be submitted electronically by the Lender in E-Tran on or before March 31, 2021, and is subject to the availability of funds.

Other Applicable Procedures

What is the time requirement for disbursements of increases to First Draw PPP Loans?

If a First Draw PPP Loan is increased in any of the manners described above in this subsection, the lender must make a single additional disbursement of the increased loan proceeds within ten (10) calendar days of the lender’s successful processing of the increase in E-Tran. If a reapplication for a new First Draw PPP Loan is approved as described above, the lender must make a one-time, full disbursement of the PPP loan within ten (10) calendar days of loan approval; for the purposes of the PPP, a loan is considered approved when the loan is assigned a loan number by SBA.

Limitation of One First Draw PPP Loan.

A borrower may reapply for a new First Draw PPP Loan in accordance with the Loan Increase procedures notwithstanding the prohibitions on more than one First Draw PPP Loan.

Where may a lender find Lender Instructions for SBA Form 1502 Reporting and Making Changes to Loan Statuses and Loan Amounts?

SBA’s Fiscal Transfer Agent (FTA) provides step-by-step instructions for 1502 reporting and for making changes to loan statuses and loan amounts. Instructions are posted in the “Section 1102 of the CARES Act – Paycheck Protection Program (PPP)” section of the FTA’s <https://colsonservices.bnymellon.com/programs/downloads.jsp>

Where may a lender find Lender Instructions for First Draw PPP Loan Reapplications:

Instructions for submitting a reapplication for a new First Draw PPP Loan can be found in the welcome email sent to all lenders from SBA as well as on the SBA Paycheck Protection Platform <https://forgiveness.sba.gov/accounts/login/?next=/> (previously known as the Loan Forgiveness Platform).

Lender Responsibilities and Additional Information under Loan Increase Procedures:

- Lenders approve reapplications for new First Draw PPP Loans and increases to First Draw PPP Loans under lenders' delegated authority. Lenders may not approve reapplications for new First Draw PPP Loans or increases to First Draw PPP Loans for borrowers where SBA has remitted a forgiveness payment in any amount to the lender on that loan; however, such borrowers remain eligible for Second Draw PPP Loans if they meet the eligibility criteria for Second Draw PPP Loans.
- If the Lender has submitted a forgiveness decision to SBA and SBA has not yet remitted the forgiveness payment to the lender, the lender must withdraw the forgiveness decision from the SBA Paycheck Protection Platform prior to taking any actions contemplated in this subsection regarding Loan Increase procedures.
- Lenders submit reapplications for new First Draw PPP Loans using the SBA Paycheck Protection Platform to request an SBA loan number for First Draw PPP Loans. Lenders request increases to First Draw PPP Loans through E-Tran.
- Only the Lender of Record may increase a loan.
- For reapplications and increases, lenders must comply with the loan amount underwriting requirements as outlined earlier in this FAQ document.
- Lenders must disburse loan increases or reapplications in a single disbursement within ten (10) calendar days of successful processing of the increase in E-Tran or issuance of the SBA loan number for reapplications. Except for those 1502 reports identified in this subsection that must be submitted on or before March 31, 2021, Lenders must submit the 1502 report within 20 calendar days after a First Draw PPP Loan increase is successfully processed in E-Tran or after the issuance of the SBA loan number for reapplications. Lenders may report PPP Loan increases and reapplications in the same batch 1502 report with PPP First Draw Loans and PPP Second Draw Loans. Lenders must not commingle PPP Loans with regular 7(a) Loans in a batch 1502 report.

How will Processing Fees be Handled?

Lender processing fees due and payable by SBA, if any, including fee differentials due to loan increases and processing fees on reapplications, will be remitted to the Originating Lender in accordance with SBA Procedural Notice 5000-20036 (July 13, 2020). For loan increases, processing fees will be calculated in accordance with the PPP rules in effect at the time the borrower submitted its original First Draw PPP Loan application. For reapplications, processing fees will be calculated in accordance with fee information as outlined elsewhere in this FAQ document. In order to obtain a processing fee on a reapplication or a loan increase, the lender must follow the procedures set forth in SBA Procedural Notice 5000-20036 and the procedures outlined in this subsection regarding Loan Increases of First Draw Loans.

What Lender Confirmation is Made Under the First Draw Loan Increase Procedures?

By submitting a 1502 report on a First Draw PPP Loan or a Second Draw PPP Loan on or after the effective date of SBA Procedural Notice 5000-20076, any PPP Lender that submitted a 1502 report for a

PPP Lender before such date agrees to the following revision to the one-time certification previously made by such lender:⁹¹

- By checking the “I confirm” box below, lender is agreeing that for each SBA Form 1502 report submitted by lender to request payment of First Draw Loan or Second Draw Loan Paycheck Protection Program (PPP) processing fees, lender confirms that:

(1) except for any First Draw Loan included in the report that has been or may be increased, (a) all First Draw Loans and Second Draw Loans included in the report were fully disbursed to the borrowers on the disbursement dates entered and in the loan amounts entered in the report, and (b) Lender will make no further disbursements on the First Draw Loans and Second Draw Loans included in the report;

(2) for any First Draw Loan included in the report that has been increased, (a) Lender approved the increase in accordance with PPP requirements, (b) Lender has fully disbursed the increased amount to the borrower on the disbursement date entered and in the amount entered in the report, and (c) Lender will make no further disbursements on the First Draw Loan;

(3) all information in the report is true and correct; and

(4) the report has been submitted by an authorized employee or agent of lender acting within the scope of Lender’s authority and Lender acknowledges responsibility for all entries and certifications made on its behalf.

PPP Lenders submitting a 1502 report for a PPP loan for the first time will be required to make this revised one-time confirmation in the lender’s FTA portal upon submission of their first 1502 report requesting payment of PPP processing fees.

Unresolved Borrowers:

If a First Draw PPP Loan is under review pursuant to PPP rules and/or information in SBA’s possession indicates that the borrower may have been ineligible for the First Draw PPP Loan it received or for the loan amount received by the borrower, the Lender of Record will receive notification from SBA when the lender submits a request for increase of the First Draw PPP Loan or submits a reapplication for a First Draw PPP Loan (“unresolved borrower”).⁹² If the lender receives notification of an unresolved borrower, the lender will not be able to process an increase on the First Draw PPP Loan, nor will the lender be able to obtain an SBA loan number on a First Draw PPP Loan reapplication. SBA will resolve expeditiously the issue related to the unresolved borrower and will notify the Lender of the process to obtain an increase on the First Draw PPP Loan or obtain a loan number on a First Draw PPP Loan reapplication, if appropriate.

When with will a Loan Increase of a First Draw Loan be Available?

Lenders may approve increases on First Draw PPP Loans starting on January 25, 2021.

⁹¹ The revised confirmation will also be posted on the home page to the 1502 Dashboard (before the Lender logs in). By logging in to the 1502 Dashboard, the Lender will be agreeing to the revised Lender confirmation.

⁹² This process also applies to Second Draw PPP Loans.

Is an employer that repays its PPP loan by the safe harbor deadline (May 18, 2020) eligible for the Employee Retention Credit?

This question is no longer applicable because, as a result of a change in the law in December 2020, receipt of a PPP loan no longer makes an employer ineligible for the Employee Retention Credit. See also the following FAQ for updated information related to the Employee Retention Credit.

As of December 27, 2020, is an employer that receives a First Draw PPP Loan or Second Draw PPP Loan also eligible for the Employee Retention Credit?

The Taxpayer Certainty and Disaster Tax Relief Act of 2020, which was enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. No. 116- 260, 134 Stat. 1182, on December 27, 2020, permits an employer that received a First Draw PPP Loan or Second Draw PPP Loan to claim the Employee Retention Credit if the employer is otherwise an eligible employer satisfying the requirements for the credit. However, payroll costs that are qualified wages for the Employee Retention Credit are not eligible for loan forgiveness if the employer elects to claim the credit for those amounts. (Additional guidance from the IRS is available at <https://www.irs.gov/pub/irs-drop/n-21-20.pdf>.)

To be eligible for a Second Draw PPP Loan, a borrower must certify on SBA Form 2483-SD that, before the Second Draw PPP Loan is disbursed, the borrower will have used the full loan amount (including any increase) of its First Draw PPP Loan “only for eligible expenses.” How does the separate requirement that the borrower must use at least 60% of the First Draw PPP Loan proceeds for payroll costs affect this certification?

The borrower may certify, for purposes of the Second Draw PPP Loan application, that it will have used all of its First Draw PPP Loan proceeds “only for eligible expenses” if the borrower has used or will use the First Draw PPP Loan proceeds for any or all of the eligible expenses outlined in subsection B.11.a.i.-xi of the consolidated interim final rule implementing updates to the PPP. Borrowers should be mindful that failure to use PPP loan proceeds for the required percentage of payroll costs will affect loan forgiveness.

If a borrower received partial forgiveness of its First Draw PPP Loan, does this make the borrower ineligible for a Second Draw PPP Loan?

If a borrower received partial forgiveness of its First Draw PPP Loan, the borrower is eligible for a Second Draw PPP Loan as long as the borrower used the full amount of its First Draw PPP Loan only for eligible expenses outlined in subsection B.11.a.i.-xi of the consolidated interim final rule implementing updates to the PPP.

May applicants use SBA’s established size standards (either revenue-based or employee-based) or SBA’s alternative size standard to qualify for a Second Draw PPP Loan?

No. Applicants may not use SBA’s established size standards (either revenue based or employee-based) or the alternative size standard to qualify for a Second Draw PPP Loan. In general, the size eligibility requirement for Second Draw PPP Loans are narrower than the size eligibility requirement for First Draw PPP Loans. With some exceptions, an applicant is eligible for a Second Draw PPP Loan only if it, together with its affiliates (if applicable), employs no more than 300 employees. The only exceptions are if an Applicant:

- Is assigned a NAICS code beginning with 72 and employs no more than 300 employees per physical location; or

- Is a news organization that is majority owned or controlled by a business concern that is assigned NAICS code 511110 or a NAICS code beginning with 5151, or is a nonprofit public broadcasting entity with a trade or business under NAICS code 511110 or 5151, and, in either case, employs no more than 300 employees per physical location.

If an owner of an applicant, or a sole proprietor, self-employed individual, or independent contractor has an Individual Taxpayer Identification Number (ITIN) instead of a Social Security Number (SSN), can they use the ITIN on the Borrower Application Form for a PPP loan and the forms to apply for loan forgiveness?

Yes. If an owner of an applicant, or a sole proprietor, self-employed individual, or independent contractor has an ITIN instead of an SSN, they may use the ITIN on the PPP Borrower Application Form (SBA Forms 2483 and 2483-SD, or lender's equivalent) and the PPP Loan Forgiveness Application Forms (SBA Forms 3508, 3508EZ, and 3508S, or lender's equivalent). An ITIN is a tax processing number only available to certain nonresident and resident aliens, their spouses, and dependents who cannot get an SSN. It is a 9-digit number, beginning with the number "9", formatted like an SSN (NNN-NN-NNNN). To be eligible for a PPP loan or to receive loan forgiveness, the applicant must meet all eligibility criteria and PPP requirements, which includes the requirement that the principal place of residence for a sole proprietor, self-employed individual, or independent contractor must be in the United States.

F. Excess Loan Amount Errors

What is an excess loan amount error?

An excess loan amount error is a borrower or lender error made in good faith that caused a borrower to receive a PPP loan amount that exceeds the borrower's correct maximum loan amount under the CARES Act and the Economic Aid Act. An excess loan amount error does not include a knowing misstatement. Knowing misstatements may result in additional action, such as charges for fraud.

- **Example 1: Borrower Error:** Borrower mistakenly failed to subtract amounts paid to employees in excess of \$100,000 (annualized and prorated) from reported payroll costs, as required by the CARES Act and Economic Aid Act. Lender performed a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll costs, and did not identify an error in the borrower's calculation of its payroll costs. As a result, the loan amount approved for the borrower exceeded the borrower's maximum loan amount.
- **Example 2: Borrower Error:** Borrower mistakenly included payments to an independent contractor in its calculation of payroll costs on its PPP Borrower Application Form. Lender performed a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll costs and did not identify the error. As a result, the loan amount approved for the borrower exceeded the borrower's correct maximum loan amount.
- **Example 3: Lender Error:** Borrower applied for and was eligible for a \$25,000 PPP loan. Lender inadvertently approved borrower for a \$35,000 loan due to a lender employee data input error. As a result, the borrower's approved loan amount exceeded the borrower's correct maximum loan amount.

What is the effect of an excess loan amount error on loan forgiveness?

A borrower may not receive loan forgiveness for any amount that exceeds the correct maximum loan amount permitted by statute for that borrower.⁹³ This is true whether the excess loan amount was caused by borrower error or lender error.

When preparing or reviewing a loan forgiveness application, if a borrower or lender identifies an error that resulted in a borrower receiving a larger PPP loan than the borrower was eligible to receive, the lender must issue a decision to SBA denying forgiveness for the amount that exceeded the borrower's correct maximum loan amount.⁹⁴ If an excess loan amount error is discovered after the lender has already submitted a forgiveness decision to SBA, the lender should promptly request the withdrawal of the lender loan forgiveness decision by notifying SBA through the SBA Paycheck Protection Platform. The lender may then submit a new lender loan forgiveness decision for the correct amount through the SBA Paycheck Protection Platform. A borrower must repay any unforgiven portion of a PPP loan. If a lender discovers an excess loan amount error after SBA has issued a final loan forgiveness decision and remitted payment, lender must promptly notify the borrower and SBA through the SBA Paycheck Protection Platform.

What is the effect of an excess loan amount error on the SBA's loan guarantee?

Borrower Error. If an excess loan amount error is due solely to the borrower's error in completing the loan application form, the borrower error does not invalidate SBA's guarantee of the PPP loan.

- **For example**, if a borrower received a PPP loan amount that exceeds its correct maximum loan amount because the borrower incorrectly calculated its payroll costs and a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning average monthly payroll cost by the lender did not identify the error, the SBA guarantee would remain in effect. However, excessive occurrences or patterns of undetected borrower errors may indicate a lender did not perform a good-faith review of borrowers' calculations or supporting documents concerning average monthly payroll costs and could be grounds for further review of the lender by SBA, which could affect the guarantee.

Lender Error. If an excess loan amount error is due in whole or in part to the lender's failure to satisfy its obligations under PPP rules and the document collection and retention requirements described in the lender application form (SBA Form 2484 and SBA Form 2484-SD), the SBA guarantee will not apply to the excess loan amount.

⁹³ See, e.g., 85 Fed. Reg. 33012 (“[I]f SBA determines that the borrower is ineligible for the loan amount or loan forgiveness amount claimed by the borrower, SBA will direct the lender to deny the loan forgiveness application in whole or part, as appropriate.”); 85 Fed. Reg. 38306 (“If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application ... the loan will not be eligible for loan forgiveness.”).

⁹⁴ See 85 Fed. Reg. 33012; 85 Fed. Reg. 38306. The lender's loan forgiveness decision should also deny forgiveness for any other portion of the loan if required under the PPP rules that have been issued by the Small Business Administration (SBA) and the Department of the Treasury implementing the Paycheck Protection Program, including Second Draw Paycheck Protection Program Loans, under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act.

- **For example**, if the lender approved a borrower for a loan amount for which the borrower did not submit payroll documentation, it indicates that the lender did not satisfy its PPP lender obligations (as further explained in FAQ 1) and the document collection and retention requirements described in the lender application form (SBA Form 2484 and SBA Form 2484- SD) with respect to the loan. Accordingly, the SBA guarantee would not apply to the portion of the loan amount that exceeds the borrower's correct maximum loan amount.

What is the effect of an excess loan amount error on a borrower's obligations?

If the lender or SBA, as applicable, determines a borrower was ineligible for any portion of its loan amount, forgiveness will be denied for the ineligible portion and the borrower must begin making payments on the remaining loan amount. Any unforgiven loan amounts remain obligations of the borrower, even if the borrower was ineligible to receive some or all of the loan.

G. Additional Information

SBA may provide further guidance, if needed, through SBA notices and a program guide which will be posted on SBA's website at www.sba.gov.

Questions on the Paycheck Protection Program 7(a) Loans may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at <https://www.sba.gov/tools/local-assistance/districtoffices>.

Lenders may call the Lender Hotline at (833) 572-0502 for live assistance regarding platform access and support, policy questions and procedures, and Capital Access Financial system (CAFS) and SBA's Electronic Transmission (E-Tran) systems support. Lenders may direct loan specific inquiries to the SBA Paycheck Protection Platform inbox; general PPP forgiveness questions to PPPForgivenessRequests@sba.gov; requests for advanced technical support, API support and UAT error support to developer@ussbaforgiveness.com; and requests for assistance on SBA Paycheck Protection Platform navigation and platform user experience issues to help@ussbaforgiveness.com.